रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-सा.-08122023-250493
CG-DL-W-08122023-250493

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 48] नई दिल्ली, नवम्बर 26—दिसम्बर 2, 2023, शनिवार/अग्रहायण 5—अग्रहायण 11, 1945
No. 48] NEW DELHI, NOVEMBER 26—DECEMBER 2, 2023, SATURDAY/AGRAHAYANA 5—AGRAHAYANA 11, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 21 नवम्बर, 2023

का.आ. 1848.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 20 की उप धारा (1) के साथ पठित धारा 19 के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतदद्वारा, श्री विनय एम. टोंसे (जन्म तिथि 12.11.1965), उप प्रबंध निदेशक (डीएमडी), भारतीय स्टेट बैंक (एसबीआई) को कार्यभार ग्रहण करने की तारीख से तथा अधिवर्षिता की आयु प्राप्त करने की तारीख (अर्थात् 30.11.2025) तक अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक में प्रबंध निदेशक (एमडी) के पद पर नियुक्त करती है।

[ई.फा.सं .2/2/2023-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 21st November, 2023

S.O. 1848.—In exercise of the powers conferred by clause (b) of section 19 read with sub-section (1) of section 20 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, hereby appoints Shri Vinay M. Tonse (DoB: 12.11.1965), Deputy Managing Director (DMD), State Bank of India (SBI) as Managing Director (MD) in SBI with effect from the date of assumption of office and up to the date of his superannuation (*i.e.* 30.11.2025), or until further orders, whichever is earlier.

[eF. No. 2/2/2023-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

विदेश मन्त्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 22 नवम्बर, 2023

का.आ. 1849.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, रियाद में श्री हरीश और श्रीमती पूर्णिका सहाय, सहायक अनुभाग अधिकारियो को दिनांक नवम्बर 22, 2023 से सहायक कोंसुलर अधिकारियो के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी.4330/1/2023(38)]

एस.आर.एच. फहमी, निदेशक (सीपीवी-I)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 22nd November, 2023

S.O. 1849.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Harish and Smt. Poornika Sahay, both Assistant Section Officers as Assistant Consular Officers in the Embassy of India, Riyadh to perform the Consular services with effect from November 22, 2023.

[F. No. T.4330/01/2023(38)]

S.R.H FAHMI, Director (CPV-I)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 28 नवम्बर, 2023

का.आ. 1850.—दिनांक 12.01.2023 की पूर्व अधिसूचना के क्रम में तथा केंद्र सरकार तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3)(ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री श्रीकांत माधव वैद्य, अध्यक्ष, आईओसीएल का तेल उद्योग विकास बोर्ड के सदस्य के रूप में कार्याकाल को दिनांक 16.11.2023 से 31.08.2024 तक या पद पर नियमित पदाधिकारी की नियुक्ति होने तक, या अगले आदेशों तक, जो भी पहले हो, एततद्वारा बढ़ाती है।

[मि. सं. जी-38011/41/2016-वित्त.I/ओएनजी-I]

अमित बंसल, उप सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 28th November, 2023

S.O. 1850.—In continuation of earlier Notification dated 12.01.2023 and in exercise of the Powers conferred by Sub-Section (3)(c) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby extends the tenure of Shri Shrikant Madhav Vaidya, Chairman, IOCL as a member of the Oil Industry Development Board till 31.08.2024, or till the appointment of regular incumbent to the post, or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-F.I/ONG.I]

AMIT BANSAL, Dy. Secy.

नई दिल्ली, 28 नवम्बर, 2023

का.आ. 1851.—दिनांक 12.07.2023 की पूर्व अधिसूचना के क्रम में तथा केंद्र सरकार तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3)(ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह स्पष्ट किया जाता है कि श्री जी. कृष्णकुमार, अध्यक्ष और प्रबंध निदेशक (सीएमडी), भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड (बीपीसीएल) के तेल उद्योग विकास बोर्ड के सदस्य के रूप में कार्यकाल की अवधि दिनांक 07.07.2023 से 30.04.2025 तक या अगले आदेशों तक, जो भी पहले हो, रहेगी।

[फा. सं. जी-38011/41/2016-वित्त.I/ओएनजी-I]

अमित बंसल, उप सचिव

New Delhi, the 28th November, 2023

S.O. 1851.—In continuation of earlier notification dated 12.07.2023 and in exercise of the Powers conferred by Sub-Section (3)(b) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government clarifies that the tenure of Shri G. Krishnakumar, Chairman & Managing Director (CMD), Bharat Petroleum Corporation Limited (BPCL) as a member of the Oil Industry Development Board will be from 07.07.2023 to 30.04.2025 or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-F.I/ONG.I]

AMIT BANSAL, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 17 नवम्बर, 2023

का.आ. 1852.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओएनजीसी लिमिटेड और अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कार्यकर्ता के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद, पंचाट (रिफरेन्स न.-12/2019) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.11.2023 को प्राप्त हुआ था।

[फा. सं. जेड-16025/03/2023-आईआर(एम)-8]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 17th November, 2023

S.O. 1852.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Reference No. 12/2019) of the Central Government Industrial Tribunal cum Labour Court, Ahmedabad as shown in the Annexure, in the Industrial dispute between the employers in relation to ONGC Limited and others and their workmen which was received along with soft copy of the award by the Central Government on 17.11.2023.

[F. No. Z-16025/03/2023-IR(M)-8]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present - Sunil Kumar Singh - I,

Presiding Officer, CGIT-cum-Labour Court,

Ahmedabad,

Date: 02nd November, 2023

Complaint (CGITA) No. : 12/2019

1. Shri Virambhai Chelabhai
2. Shri Maganbhai Ramanbhai Gohil
3. Shri Baldevbhai Vaghubhai Desai
4. Shri Dudhsingh Bhojsingh Gehlot
5. Shri Lallubhai Khumabhai Rabari
6. Shri Suresh P. Parmar
7. Shri Rajubhai Prabhatbhai Desai
8. Shri Naresh Haribhai Vaghela
9. Shri Motibhai Lallubhai Desai
10. Shri Ashaji Galaji Thakor
11. Shri Chelaji Dahyaji Thakor
12. Shri Thakor Khodaji Babuji
13. Shri Thakor Dashrathbhai
14. Shri Siddhraj
15. Shri Thakor Rameshbhai
16. Shri Imran
17. Shri Kamlesh Makwana (Tenkar),

    All C/o Glorious Petroleum Mazdoor Sangh,

    A/3, Priyadarshini Society,

    Near New Railway Colony, Sabarmati,

    Ahmedabad – 380019

- Complainants / Workmen / Drivers

V

1. The Executive Director – Asset Manager,
   ONGC Ltd., 5th Floor, Avani Bhavan, Chandkheda,
   Ahmedabad – 380005.
2. The Incharge Transport,
   Transport Section, ONGC Ltd., Sabarmati,
   Ahmedabad.
3. M/s Jaydev B. Barot,
   Near Mehsana Dudh Sagar Dairy,
   Mehsana.
4. M/s Devendra Transport,
   A/3, H.B. Commercial Centre, Near Vishat Petrol Pump,
   Chandkheda, Ahmedabad.
5. M/s George Enterprise,
   106, Gayatri Complex, Near Bridge, Sabarmati,

Ahmedabad.

6. M/s Janak Transport,
Near Nagalpur Cross Road, Mehsana Highway,
Mehsana (Gujarat).

7. M/s Sun Travels,
Petrol Pump, Palavasna Circle, Rampura Road, Near ONGC,
Mehsana.

8. M/s Vinod Transport,
Pramukh Swami Avenue, Near Star Line, RTO Road,
Mehsana Highway, Mehsana.

9. M/s Shree Nagrani (Narayani) Transport,
A/2, H.B. Commercial Centre, Near Vishat Petrol Pump,
Chandkheda, Ahmedabad.

10. M/s B.L. Chaudhary,
A/3, Shivam Bunglows, Near Deep Bhumi Flat, Janta Nagar,
Chandkheda, Ahmedabad.

11. M/s Jay Ambe Bus Service,
Varun Dhavan Bunglows-2, Behind SIMS Hospital,
Science City, Sola, Ahmedabad.

12. M/s Dilip Jani Transport,
Umiya Shopping Centre, Near Rajkamal Petrol Pump,
Mehsana.

13. M/s Honey Transport,
107, Sangath Complex, Near Stadium, Motera Road,
Sabarmati, Ahmedabad.

14. M/s M.V. Desai,
A/3, H.B. Commercial Centre, Near Vishat Petrol Pump,
Chandkheda, Ahmedabad.

15. M/s Mann Transport,
A/3, H.B. Commercial Centre, Near Vishat Petrol Pump,
Chandkheda, Ahmedabad.

- Opponents / Employers

Adv. for the Complainants No.'s 2,3,5,6,8,9,10,11,12,13,16 & 17 - Ms. Amita S. Shah

Adv for Complainant No.'s 1,4,7,14,15 - None

Adv. for the Opponents No.'s 1 & 2 - Shri K. V. Gadhia & Shri M. K. Patel

Adv. for the Opponents No. 3 - Shri Chintan Gohel

Adv. for the Opponent No. 4, 5, 9, 11, 14 & 15 - Shri Vikram Mashar

Adv. for the Opponent No. 6, 7, 8, 10, 12 & 13 - None

AWARD

1. This complaint has been filed u/s 33 (A) of Industrial Disputes Act, 1947, against the O.P. / employers for changing the condition of service of complainants / drivers by oral termination dated 20.03.2019 during the pendency of the industrial dispute raised by 102 drivers including present complainants in respect of fixing the wages and grant of benefits under ONGC's 'fair wage policy' vide Reference (CGITA) No. 103/2018.

2. The brief facts state that the complainants were working continuously as drivers of the opposite company through different contractors for more than last 10 years, lastly through the present ones. They worked for more than 240 days in each and every calendar year. The complainants were not given their salary / wages as per settlement dated 29.03.2012, which was arrived at between ONGC, contractual workmen and union before CLC (C), Ajmer. Complainants along with other co-workers raised industrial dispute through their union i.e. 'Glorious Petroleum Mazdoor Sangh' against O.P. No. 1 & 2 / ONGC and contractors before the Deputy / Assistant Commissioner (Central) of Labour, where no settlement was arrived at during the process

of conciliation leading to the submission of failure report to the Ministry of Labour, New Delhi. The dispute was scheduled and referred by the Central Government vide order dated 29.10.2018 for adjudication to this Tribunal and the same was registered as Reference (CGITA) No. 103/2018.

Schedule under Reference

"1. Whether the demand of General Secretary, Glorious Petroleum Mazdoor Sangh, Ahmedabad against the Executive Director – Asset Manager, ONGC Ltd., Ahmedabad and others to fix the wages and grant benefit under ONGC's Fair Wage Policy as per the order dated 29.03.2012 (copy enclosed) of Deputy C.L.C (C) to 102 contractual workers (List enclosed) is legal, fair and justified?

If yes, what reliefs the workmen are entitled to and from which date?

What other directions, if any, are necessary in the matter?"

"2. Whether the demand no. 5 (tender agreement should be followed) of General Secretary, Glorious Petroleum Mazdoor Sangh, Ahmedabad against the Executive Director – Asset Manager of ONGC Ltd., Ahmedabad and others, is proper and justified? If yes, what directions are necessary in the matter? What relief the workmen are entitled to?"

Aforesaid reference was fixed for hearing on 07.03.2019 and was adjourned to 09.05.2019. Opponents / employers got annoyed and changed the condition of service of complainants by terminating them orally from 20.03.2019 without any notice / terminal benefits / departmental enquiry, contrary to the company's policy / condition under settlement of continuing the engagement of drivers from contractor to contractor every after three years. The oral termination was made without obtaining any approval from this Tribunal violating the mandatory provisions of Section 33 of Industrial Disputes Act. The complainants have prayed to set aside their oral termination and reinstate them with back wages and continuity of service. All the complainants except complainant no. 4 / Shri Dudhsingh Bhojsingh Gehlot, have filed their affidavits Ex. 2 to 17 in support of the complaint respectively.

3. It is pertinent to mention at this stage that before the filing of written statement on behalf of O.P. No. 1&2 / ONGC, my Ld. predecessor passed an order dated 04.07.2019, reinstating the complainants with back wages from the date of termination. The opposite party no. 1 & 2 / ONGC moved an application before this Tribunal on 08.07.2019 with a prayer to set aside the order dated 04.07.2019 and to grant them an opportunity to file written statement. The same was rejected vide order dated 08.07.2019. The order dated 04.07.2019 passed by this Tribunal was challenged by the first party / employer no. 1&2 / ONGC before the Hon'ble Gujarat High Court in R/Special Civil Application No. 16153 of 2019 (converted from SCA/30105/2019 dated 23.09.2019). Hon'ble Gujarat High Court, vide order dated 18.11.2019, directed the parties to approach this Tribunal and granted time to O.P. No. 1&2 / ONGC to file written statement in a stipulated period further directing the Tribunal to decide the matter in a time bound period.

4. The matter was proceeded afresh accordingly. Out of total 17 original complainants / drivers, only complainant no. 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 16 and 17 turned up and contested, hereinafter be called as 'contesting complainants'. Complainant no. 1, 4, 7, 14 and 15 did not turn up for contesting their cause.

5. The contesting opposite party no.'s 1, 2, 4, 9, 11, 14 and 15 have submitted their written statements but contesting opposite party no.'s 3 & 5 have not submitted their written statements, though participated in the proceedings. Opposite party no.'s 6, 7, 8, 10, 12 and 13 have neither turned up nor submitted their written statements despite sufficient service vide order dated 26.06.2023. The matter was accordingly directed to be proceeded on merits.

6. The first party / O.P. no. 1&2 / ONGC has submitted its written statement at Ex. 56 denying the averment of the complainants that they were working with ONGC for more than 10 years. They have denied to have terminated the complainants on 20.03.2019. ONGC has further denied to have changed the service conditions of the complainants. It is further pleaded by the ONGC that because of expiry of contract due to efflux of time, the contractors have withdrawn the vehicles along with their drivers hired by ONGC. The complainants are not the employees of ONGC but of contractors. The composite settlement dated 18.07.2012 is not applicable in case of contract for hire of vehicles along with drivers because contracts were not for the deployment of labour but for hire of vehicles. There is no master and servant relationship between the ONGC and the complainants. The question for taking permission and approval as alleged, does not arise. ONGC does not make any payment to such drivers employed by the contractors. It is further stated that all contracts for hiring the services of light vehicles are finalized for a period of three years through the process of open tender / competitive bidding. The drivers of hired vehicles are engaged by different contractors to provide the service of vehicles under 'service contract' and not covered under the 'job contract'. It is stated that neither the complainants / drivers nor their said union 'Glorious Petroleum Mazdoor Sangh' were parties to the settlement dated 18.07.2012. The drivers are not entitled to get benefit of settlement dated 18.07.2012.

7. The opposite party no. 4 / M/s Devendra Transport (Travels) has filed its written statement at Ex. 38. The opposite party no. 14 / M/s M. V. Desai has filed its written statement at Ex. 41. The opposite party no. 15 / M/s Mann Transport (Travels) has filed its written statement at Ex. 42 on the similar footings. All these three contractors have denied the averment of the complainants in general denying that the complainants were working since last more than 10 years as alleged. They have further denied to have terminated the services of the complainants orally on 20.03.2019. They have further submitted that they entered into the contract with the ONGC for hiring about 16 vehicles in February 2016 for three years till February 2019. ONGC gave an extension for further one month hence their service contracts expired on 20.03.2019. They have further stated that they were awarded new contracts by the ONGC from 20.03.2019 for another three years. They were initially informed by ONGC vide letter dated 18.03.2019 that the interim relief granted by CGIT, Ahmedabad under Reference No. 21/2016 was not in existence. In absence of any clarification for the absorption of concerned workmen, concerned drivers were offered job but the offer was not acceptable to them according to the terms and conditions of new contract. They have denied to have contravened any service condition as provided under Section 33 of Industrial Disputes Act, 1947. Further praying to dismiss the complaint.

8. The opposite party no. 9 / M/s Shree Nagrani (Narayani) Transport has filed its written statement at Ex. 39. The opposite party no. 11 / M/s Jay Ambe Bus Service has filed written statement at Ex. 40. These two contractors have filed their written statements on the similar footings with those of opposite party no.'s 4, 14 and 15 except that these two contractors have denied to have renewed their contracts after 20.03.2019. They have similarly stated that they have neither terminated the services of concerned complainants / drivers nor have received any new contract after the expiry of old contract on 20.03.2019.

9. The complainants have filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Seriatim of Document	Type / Remarks
1	Memorandum of Settlement arrived under Section 12 (3) of the Industrial Disputes Act, 1947	18.07.2012	Ex. 19 / 1	Xerox
2	Bid document for hiring the services of 94 Jeep Taxies for three years for Ahmedabad Assest, issued by ONGC, Ahmedabad	Nil	Ex. 19 / 2	Xerox
3	Letter by DGM – Head Logistics, ONGC, Ahmedabad to 20 contractors on the subject 'Confirmation regarding CGIT protected drivers'	18.10.2018	Ex. 19 / 3	Xerox
4	A Letter written by DGM – Head Logistics, ONGC, Ahmedabad to 03 contractors on the subject 'Deployment of Jeep Taxies'	18.03.2019	Ex. 19 / 4	Xerox
5	A letter to the Police Inspector, Chandkheda Police Station, Ahmedabad by the opposite parties – 03 contractors	20.03.2019	Ex. 19 / 5	Xerox
6	Letter from Chief GM (HR) – Head HR – ER, ONGC Ltd., Ahmedabad Asset to GM (Log.) Head Logistics, ONGC Ltd., Ahmedabad Asset	27.05.2019	Ex. 47 / 1	Xerox
7	List of 17 drivers whose services were terminated pending Reference (CGITA) No. 103/2018 instituted for 102 drivers.	Nil	Ex. 47 / 2	Xerox
8	Bid Document for hiring the services of 94 nos. Jeep Taxies General Shift Duty (With AC and GPS) for a period of three years for Ahmedabad Asset	15.10.2018	Ex. 100 / 1	Xerox
9	Notification of Award by ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar	31.01.2019	Ex. 105	Xerox
10	Letter from Chief Manager (Lgts), ONGC Ltd., Ahmedabad Asset to M/s Vinod Transport Co., Mehsana	13.03.2012	Ex. 106	Xerox
11	Memorandum of Settlement arrived at u/s 12 (3) of Industrial Disputes Act, 1947	18.07.2012	Ex. 107	Xerox
12	Duty / Entry pass of Shri Naresh H. Vaghela issued by M/s Devendra Travels	Nil	Ex. 122 / 1	Xerox
13	Duty / Entry pass of Shri Imran Malik issued by GEOS Enterprise	Nil	Annexed with Ex. 122	Xerox
14	Wage slip of Shri Naresh Haribhai Vaghela from M/s Devendra Travels for the m/o April 2016, May 2016 and June 2016	Nil	Ex. 122 / 2	Xerox

15	Log Book Issue Certificate of Shri Khodaji Babuji Thakor from GEOS Enterprise	Nil	Ex. 122 / 3	Xerox
16	Log Book Issue Certificate of Shri Nareshbhai Vaghela from Devendra Travels	Nil	Ex. 122 / 4	Xerox

10. All 12 contesting complainants have examined only Shri Nareshbhai Haribhai Vaghela (complainant no. 8) at Ex. 119 on behalf of them all.

11. The opposite parties / employers have filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Seriatim of Document	Type / Remarks
1	Letter from M/s Devendra Travels to the I/c – (MM), ONGC Ltd., Ahmedabad	29.01.2019	Ex. 43 / 1	Xerox
2	Letter from M/s Devendra Travels to the I/c – (MM), ONGC Ltd., Ahmedabad	31.01.2019	Ex. 43 / 2	Xerox
3	Letter from M/s Devendra Travels to the I/c – (MM), ONGC Ltd., Ahmedabad	04.02.2019	Ex. 43 / 3	Xerox
4	Letter from M/s Devendra Travels to the I/c – (MM), ONGC Ltd., Ahmedabad	07.02.2019	Ex. 43 / 4	Xerox
5	Letter from M/s Devendra Travels to the Head - I/c – (MM), ONGC Ltd., Ahmedabad	14.02.2019	Ex. 43 / 5	Xerox
6	Letter from M/s Devendra Travels to the Head - I/c – (MM), ONGC Ltd., Ahmedabad	14.03.2019	Ex. 43 / 6	Xerox
7	Letter from ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar, M/s Mann Travels, Ankleshwar and M/s M.V. Desai, Mehsana	18.03.2019	Ex. 43 / 7	Xerox
8	Letter from M/s Devendra Travels to the Head MM, ONGC Ltd., Ahmedabad	19.03.2019	Ex. 43 / 8	Xerox
9	Letter from M/s M.V. Desai to the Head - I/c – (MM), ONGC Ltd., Ahmedabad	13.03.2019	Ex. 44 / 1	Xerox
10	Letter from ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar, M/s Mann Travels, Ankleshwar and M/s M.V. Desai, Mehsana	18.03.2019	Ex. 44 / 2	Xerox (Replica of Ex. 43/7)
11	Letter from M/s Mann Travels to the Head - I/c – (MM), ONGC Ltd., Ahmedabad	08.03.2019	Ex. 45 / 1	Xerox
12	Letter from ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar, M/s Mann Travels, Ankleshwar and M/s M.V. Desai, Mehsana	18.03.2019	Ex. 45 / 2	Xerox (Replica of Ex. 43/7)
13	Letter from GM – Head Logistics, ONGC Ltd., Ahmedabad Asset to GM-I/c HR-ER, ONGC, Ahmedabad Asset	10.06.2019	Ex. 48 / 1	Xerox
14	Letter from GM – Head Logistics, ONGC Ltd., Ahmedabad Asset to M/s Devendra Travels, Ankleshwar, M/s Mann Travels, Ankleshwar and M/s M.V. Desai, Mehsana	10.06.2019	Ex. 48 / 2	Xerox
15	Letter from GM – Head Logistics, ONGC Ltd., Ahmedabad Asset to GM-I/c HR-ER, ONGC, Ahmedabad Asset	24.06.2019	Ex. 48 / 3	Xerox
16	Letter from M/s Devendra Travels to the Head Logistics, ONGC Ltd., Ahmedabad	19.06.2019	Ex. 50 / 1	Xerox
17	Contract agreement between M/s Mann Travels and ONGC for the period from 2019 to 2022	Nil	Ex. 108	Xerox
18	Scope of work / Contract and General Conditions of the Contract	Nil	Ex. 109	Xerox
19	Notification of award from GM – Head MM, ONGC Ltd., Ahmedabad to M/s Mann Travels, Ankleshwar	05.02.2019	Ex. 110	Xerox
20	Contract agreement between M/s Devendra Travels and ONGC for the period from 2019 to 2022	Nil	Ex. 111	Xerox
21	Scope of work / Contract and General Conditions of the Contract	Nil	Ex. 112	Xerox

22	Notification of award from GM – Head MM, ONGC Ltd., Ahmedabad to M/s Devendra Travels, Ankleshwar	31.01.2019	Ex. 113	Xerox
23	Contract agreement between M/s M. V. Desai and ONGC for the period from 2019 to 2022	Nil	Ex. 114	Xerox
24	Scope of work / Contract and General Conditions of the Contract	Nil	Ex. 115	Xerox
25	Notification of award from GM – Head MM, ONGC Ltd., Ahmedabad to M/s M. V. Desai, Mehsana	05.02.2019	Ex. 116	Xerox
26	Fair Wage Policy – 2015 in Logistics Contracts	10.11.2015	Ex. 120 /1	Xerox

12. The first party / employer no. 1&2 / ONGC has not adduced any oral evidence. The first party / employer – contractor / opposite party no. 4 has examined Shri Harishchandra K. Karade at Ex. 124. Opposite party no. 5 has examined Shri Jitendra Solanki at Ex. 130. Opposite party no. 9 has examined Shri Mukeshkumar Kantibhai Bharvad at Ex. 125. Opposite party no. 11 has examined Shri Vinodbhai Govindbhai Patel at Ex. 126. Opposite party no. 14 has examined Shri Maljibhai Vastabhai Desai at Ex. 127. Opposite party no. 15 has examined Shri Rameshbhai Maljibhai Desai at Ex. 128.

13. I have perused the records and heard Ld. Counsel Ms. Amita Shah, advocate for the contesting complainants no. 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 16 and 17 in the light of her written arguments at Ex. 133, Shri K. V. Gadhia and Shri M. H. Patel, advocates for first party / employer no. 1 & 2 / ONGC in light of their written arguments at Ex. 134, Shri Chintan Gohel, advocate for opposite party no. 3 and Shri Vikram Mashar, advocate for opposite party no. 4, 5, 9, 11, 14 and 15 in addition to his written arguments at Ex. 136.

14. The main points for consideration under this complaint are as under.

    I. Whether the complainants / drivers have worked for 240 days or more in continuity during each calendar year preceding their said oral termination dated 20.03.2019? If yes, who is the employer of the complainants?

    II. Whether the act of the complainant's employer of not renewing the contract or not giving duty to the complainants / drivers after the expiry of contract period, be regarded as change in conditions of services within the meaning of Section 33 (1) (a) of the Industrial Disputes Act, 1947?

15. First Point under consideration is as to whether the complainants / drivers have worked for 240 days or more in continuity during each calendar year preceding their said oral termination dated 20.03.2019? If yes, who is the employer of the complainants?

16. Ms. Amita Shah, Adv. for contesting complainants, has argued that the complainants were working with the opponents no. 1&2 / ONGC company for more than 10 years continuously as full time drivers at Ahmedabad region through their concerned contractors. The complainants / drivers worked for more than 240 days in each and every calendar year. The employer / ONGC has not discharged his onus to produce the 'log books' which could show the attendance of the drivers. She has referred The Superintending Engineer TWAD Board & anr. V M. Natesan etc., 2019 LLR 743 SC and Director, Fisheries Terminal Division V Bhikubhai Meghajibhai Chavda, AIR 2010 SC 123, wherein Hon'ble Supreme Court has observed that, once it has come in evidence that the workman has completed 240 days of service in preceding year, then the initial burden is shifted on the employer to rebut the oral evidence of the workman by producing relevant oral and documentary evidence. She has further emphasized that the O. P. No. 1&2 / ONGC is duty bound as principle employer to pay wages in case the contractor fails to pay wages to his workmen and recover the amount so paid from the contractor and to perform other duties prescribed u/s 21 of Contract Labour (Regulation & Abolition) Act, 1970. It has been argued that the employer / ONGC and contractors have changed the condition of service of the complainants / drivers by the said oral termination dated 20.03.2019 despite pendency of Reference No. 103/2018 without obtaining permission or approval from the Tribunal and have violated the provisions of Section 33 of Industrial Disputes Act, 1947. Prayed to set aside the said order and reinstate the complainants with back wages and continuity in service.

17. Ld. Counsels for the O. P.s have jointly argued that complainants have not specifically stated as to for what duration they worked with which contractor. The single testimony of complainant no. 8 in respect of 240 days work done by all the complainants in the current year preceding the said oral termination dated 20.03.2019, cannot be accepted. It has been argued that the contract came to an end by efflux of time and the complainants have not been terminated by opposite parties / employers / contractors, hence, the question of taking permission / approval from the Tribunal does not arise as no change in any condition of service has been affected. Prayed to dismiss the complaint.

18. It is true that the complainants have not specifically pleaded in their consolidated complaint as to for what duration and through which contractor, they worked with O.P. No. 1&2 / ONGC. It is not disputed by O.P. No. 1&2 / ONGC and the contesting contractors that the complainants were working as drivers with ONGC

through their contractors. The complainant no. 8 / Shri Nareshbhai Haribhai Vaghela in his examination-in-chief submitted through an affidavit Ex. 119, has stated for himself and other contesting complainants that he along with his colleagues was working continuously since the year 2010, through contractors with O.P. No. 1&2 / ONGC. He has not named any contractor with whom he was working for what duration except stating that contractors were changed by ONGC after every three years. The sole witness, in his cross-examination conducted by O.P. No. 1&2 / ONGC, has specifically named O.P. No. 4 / M/s Devendra Transport (Travels) with whom he was working and has denied to have worked with O.P. No. 9 / M/s Shree Narayani Contractors, O.P. No. 11 / Jay Ambe Bus Service, O.P. No. 14 / M/s M. V. Desai and O.P. No. 15 / M/s Mann Transports (Travels). He has further admitted in his cross-examination conducted by O.P. No. 4, 5, 9, 11, 14 & 15 that the contract between ONGC and between service provider contractors was for limited period.

19. A bare perusal of the settlement dated 18.07.2012 shows that the management of O.P. No. 1&2 / ONGC agreed to extend certain benefits recorded in the minutes of the proceedings dated illegible (perhaps dated 29.03.2012) before the Conciliation Officer / Dy. CLC, Ajmer, subject to the further necessary approval of the ONGC management. Subsequently, a final settlement dated 18.07.2012 was arrived u/s 12 (3) of Industrial Disputes Act, 1947 amongst contractors of the employee's various unions and ONGC. According to the terms under Para 1 of the Settlement, it was agreed as under -

"whenever contractor of ONGC changes, list of contract workers engaged by previous contractor will be provided to the new contractor so that same contract worker can be engaged. The contract workers who were engaged as on 24.06.2008 and continued to be engaged till date and also those who were engaged on 01.01.2011 and have continued till date will only be eligible to be included in the list."

20. The Para 7 of the Terms of Settlement dated 18.07.2012 reads as under - "these benefits to contract workers shall be extended through concerned contractor w.e.f. 01.04.2012 and this settlement will remain in force for a period of five years from the date of signature or till minimum wages for oil sector are notified by Central Government by including in the schedule employment for oil mines, whichever is earlier"

21. Accordingly, only those workers were to be included in the list to be handed over to the next contractor for their engagement who were engaged on 24.06.2008 and were continued till date i.e. date of settlement i.e. 18.07.2012. The other category of workers who were engaged on 01.01.2011 and were continuing till the date of settlement, were also made eligible to be included in the list for their further engagement with the new contractor. Now it is to be seen as to whether the complainants were engaged on the either of the two cut off dates as provided in the settlement. Complainants have neither specified the date of their engagement in complaint nor in the only deposition of complainant no. 8 / Shri Nareshbhai Haribhai Vaghela. The complainants have mentioned in Para 1 of their complaint that they were working with the opposite companies for more than 10 years at Ahmedabad region which suggest that they were working w.e.f. 03.04.2008. However, the complainant no. 8 / Shri Nareshbhai Haribhai Vaghela in his deposition at Ex. 119 has in Para 4 of his examination-in-chief, stated that the complainants were continuously working since the year 2010 which negates the averment based aforesaid suggestive conclusion. According to complainants own deposition, their working from the first cut off date i.e. from 24.06.2008 is not substantiated. Even if the part of deposition of the complainant no. 8 is accepted to be true, the said benefit under settlement was made to remain in force only for a period of five years or till the minimum wages for oil sector were notified by Central Government by including in the schedule employment for oil mines, whichever was earlier. So in any case, the settlement was workable maximum till 17.07.2017. Complainants have pleaded that the said oral termination having been effected from 20.03.2019 i.e. after the cut off period mentioned in the settlement. The complainants, therefore, could not claim the benefit of settlement dated 18.07.2012 on the date of their said oral termination in the year 2019. This apart, neither complainants / drivers nor their union i.e. Glorious Petroleum Mazdoor Sangh, Ahmedabad was the party to the settlement dated 18.07.2012.

22. The O.P. No. 1&2 / ONGC has filed copy of notification of the award for the period of three years after March 2019 awarded to O.P. No. 4 / M/s Devendra Transport (Travels) vide Ex. 105, awarded to O.P. No. 14 / M/s M.V. Desai vide Ex. 114 and awarded to O.P. No. 15 / M/s Mann Travels vide Ex. 110. Contesting complainants have filed through list Ex. 122, photocopy of duty / entry pass of complainant no. 8 / Shri Nareshbhai H. Vaghela for the duration of 21.01.2015 to 30.04.2015 and from 14.05.2015 to 13.11.2015 issued by O.P. No. 4 / M/s Devendra Transport (Travels) and duty / entry pass of complainant no. 16 / Shri Imran on which the duration, though illegible but seems to be something like 16.11.2015 to 24.02.2018 issued by some Geos Enterprise, wage slips of complainant no. 8 / Shri Nareshbhai H. Vaghela from April 2016 to June 2016 issued by O.P. No. 4 / M/s Devendra Transports (Travels), log book of complainant no. 12 / Shri Khodaji B. Thakor for the month of March 2019 issued by some Geos Enterprise and log book of complainant no. 8 / Shri Nareshbhai Vaghela for the month of April 2016 issued by O.P. No. 4 / M/s Devendra Transports (Travels).

23. It is pertinent to mention that despite court's order, O.P. No. 1&2 / ONGC has not produced the logbooks of the concerned drivers, which could reflect the exact attendance period of the complainants / drivers on duty. Hence, an adverse inference can certainly be drawn against the O.P. No. 1&2 / ONGC to this extent. In view of the averment in the complaint and deposition of complainant no. 8 stating that the complainants worked for more than 240 days in each calendar year, deserves to be accepted. It is accordingly held that the complainants / drivers worked for 240 days or more in the calendar year preceding their said oral termination dated 20.03.2019.

24. According to the complainants' own version, they have presented themselves to be working with the O.P. No. 1&2 / ONGC through their respective contractors. Complainant no. 8 / Shri Nareshbhai Haribhai Vaghela in his cross-examination conducted by O.P. No. 1&2 / ONGC at Ex. 119, has clearly stated that contractors used to pay his salary. The vehicle driven by him belonged to the contractor. He did not have any I-card issued by ONGC. He has further stated that his PF etc. was deducted by his contractor only. The liability of O.P. No. 1&2 / ONGC to ensure payment of wages to the workmen / drivers was only in case of default of payment of wages by the contractors to their workmen / drivers. However, the connected CGIT case Reference (CGITA) No. 103/2018 dated 29.10.2018 is w.r.t. the adjudication in respect of the legality and justification of the demand in respect of wage fixation and benefits under ONGC's fare wage policy as per order dated 29.03.2012 passed by Dy. CLC (C) in respect of 102 contractual listed workmen and not for non-payment of existing wages to the drivers. In view of law laid down by Hon'ble Supreme Court in Kirloskar Brothers Limited V Ramcharan and ors., Civil Appeal Nos. 8446-8447/2022, Judgement dated 05.12.2022, the complainants have not alleged that the contracts of aforesaid descriptions between the principal employer ONGC and the aforesaid three contractors were sham, bogus or camouflage to deny employment benefits to the complainants / drivers and in view of undisputed fact that the salary was paid by the contractors and their PF dues was also deducted by the contractors only. In fact the complainants / drivers were wholly in the disciplinary control of their respective contractors. It is accordingly held that the complainants were the employees of their respective contractors only. The first point is decided accordingly.

25. The second point of determination under consideration is as to whether the act of the complainant's employer of not renewing the contract or not giving duty to the complainants / drivers after the expiry of contract period, be regarded as change in conditions of services within the meaning of Section 33 (1) (a) of the Industrial Disputes Act, 1947?

26. Much emphasis has also been given by the complainant's Ld. Counsel on Para 9 of the bid / tender document in respect of hiring the vehicles, which lays a condition of continuity of engagement of drivers to be engaged by the new contractors also. In view of this argument raised by the complainant, I have examined the bid document filed on behalf of the complainants as Ex. 100 / 1. Relevant Para 9 of the bid document reads as under –

> "9.0 Continuation of Court Protected Drivers.
>
> The contractor may note that some of the drivers deployed on the existing 94 nos. of jeep taxi for general shift duty by existing contractors are been given interim relief by CGIT vide CGIT ref 21 of 2016 and their services may not be terminated even after expiry of existing contract. The services of these drivers are required to be continued in the next contracts finalised through this tender and engagement of such drivers under new contract is subject to the continuation of interim relief order in CGIT Ref 21 of 2016. All such drivers will be employees of the contractors and they are required to discharge their duties as per the relevant clauses of the contract and provide the services of vehicles as per the terms & conditions of the contract. However, tentative 49 such workers are court protected workers who need to be continued in the contracts to be finalised against this tender. The list of such drivers will be made available to the contractors by the Logistics section after issuance of NOA and before mobilisation of vehicles under this tender."

27. The aforesaid clause at Para 9 of the bid tender closing / opening dated 15.10.2018 goes to show that only the services of those drivers who were awarded interim relief in CGIT Reference No. 21/2016, were required to be continued in next contract and the engagement of such drivers under the new contract was subject to the continuation of referred interim relief. It has been informed by the office that present complainants were not the parties in CGIT Reference No. 21/2016. It is pertinent to mention at this place that my predecessor / Ld. Presiding Officer also made reference of existing interim relief while passing order on 04.07.2019. Hon'ble Gujarat High Court vide order dated 18.11.2019 passed in R/SCA No. 16153/2019 has also made observation that this was a factual matrix error. No such interim relief / any direction for continuity of service of the workmen in case the contractor is changed, was ever issued by this Tribunal in the connected CGIT Reference No. 103/2018 on the basis of which, this complaint has been filed. It is worth mentioning that the Ld. Predecessor has also based his award on the letter dated 27.05.2019 (as an enclosure to Ex. 47) written by the officers of the O.P. No. 1 & 2 / ONGC interse wherein the sender – Chief GM (HR) has expressed his opinion to his colleague GM (Log.), Head Logistics, ONGC, Ahmedabad Asset that he is of the considered view that Section 33 (2) has been contravened by terminating services of 47 contractual

drivers. The recipient colleague GM, Head Logistics, Sabarmati Complex, ONGC Ahmedabad Asset replied back to the sender colleague vide letter dated 10.06.2019 at an enclosure to Ex. 47, informing that the clause in respect of court protected drivers vide CGIT Reference No. 21/2016 was already inserted in the tender and further the interim relief was not extended beyond 24.11.2016 in CGIT Reference No. 21/2016 and such drivers were no more court protected and the concerned contractors were informed vide letter dated 18.03.2019 accordingly. The same letter dated 18.03.2019 which is also filed as an annexure to list Ex. 45 and addressed to O.P. No. 4, O.P. No. 14 and O.P. No. 15, is on record. That apart, the present complainants / drivers are not the parties in the list of 241 workmen in CGIT Reference No. 21/2016. As far as the breach of Rule 33 (2) of Industrial Disputes Act, 1947 is concerned, it shall be dealt in the next part of my discussion. It is abundantly clear that the clause 9 in the bid document was clearly a rider to inform the contractors that the deployment of their drivers was subject to the interim order of CGIT passed in Reference No. 21/2016 which had nothing to do with this complaint's connected CGIT Reference No. 103/2018.

28. The conduct of the ONGC / contractors can be asertained on the basis of various correspondences made between the contractors and ONGC and the depositions of both the parties on record. O.P. No. 4 / contractor vide his letter dated 29.01.2019 at Ex. 43/1, letter dated 31.01.2019 at Ex. 43/2, letter dated 07.02.2019 at Ex. 43/4, letter dated 14.03.2019 at Ex. 43/6 and letter dated 19.03.2019 at Ex. 43/8 and O.P. No. 14 vide his letter dated 13.03.2019 at Ex. 44/1 and O.P. No. 15 vide his letter dated 08.03.2019 at Ex. 45/1, have sought directions from the ONGC in respect of engagement of the concerned drivers in view of the new contract commensing from March 2019. ONGC vide letter dated 18.03.2019 at Ex. 43/7 categorically informed all these contractors that the interim order passed in CGIT Reference No. 21/2016 did no more exist but pending in the Tribunal. Shri Harishchandra K. Karade, witness for O.P. No. 4 deposed vide Ex. 124, Shri Maljibhai Vastabhai Desai, witness of O.P. No. 14 deposed vide Ex. 127 and Shri Rameshbhai Maljibhai Desai, witness of O.P. No. 15 deposed vide Ex. 128, have stated in accordance with their written statements that they are still ready to engage the concerned drivers at Ankleshwar as they have no contract at Ahmedabad. However, complainants' sole witness / complainant no. 8 / Shri Nareshbhai Haribhai Vaghela stated in his cross-examination that he is not willing to work at the place different than the present one. Though, the offer of these contractors's witnesses seems to be an offer for the duration after the year 2022 as the three years contract would have expired if counted from the year 2019 and aforesaid witnesses have deposed in the year 2023. Shri Mukeshkumar Kantibhai Bharvad, witness of O.P. 9 deposed vide Ex. 125 and Shri Vinodbhai Govindbhai Patel, witenss of O.P. No. 11 deposed vide Ex. 126, have stated that the complainants were not their employees. Complainants's sole witness Shri Nareshbhai Haribhai Vaghela has also stated that he has not worked with these contractors. The analysis of the aforesaid documents and the depositions of the contractors's witnesses goes to show that they were always bonafide in their conduct in respect of taking decision to engage drivers on their hired vehicles before the commencement of their new contract in the year 2019. The argument of Ld. Counsel for the contesting complainants does not stand accordingly.

29. The law on the consequence of change in the condition of service within the meaning of Section 33 of the Industrial Disputes Act, 1947, is settled and no more res-integra. Section 33 of Industrial Disputes Act, 1947 reads as under:

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall, -

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub- section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute -

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation - For the purposes of this sub- section, a" protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub- section (3) shall be one percent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a] labour Court, Tribunal or National Tribunal under the proviso to sub- section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub- section had expired without such proceedings being completed.]

30. The five judges constitution bench of Hon'ble Supreme Court in Jaipur Zilla Sahakari Bhoomi Vikas Bank Limited V Ram Gopal Sharma and ors., (2002) 2 SC C 244, has settled the law. The brief facts of the instant case were : the workman was dismissed from service holding him guilty after enquiry by order dated 23.12.1974. Since an industrial dispute was pending at that time, in view of provisions contained in Section 33 (2) (b), the employer approached the Industrial Tribunal at Chandigarh before which the industrial dispute was pending for approval of action taken. However the application was dismissed as withdrawn on 04.09.1976, then the workman demanded full wages from the employer from the date of his suspension till the date of demand contending that the action of the employer dismissing him from service was not approved by the Tribunal. The background of this case can be understood from Paras 2 and 3, which read as under -

"2. Finding conflict of views expressed by benches of three learned judges of this Court on the question, the reference is made.

3. The two Benches consisting of three learned Judges in (1) Strawboard Manufacturing Co. v. Gobind [1962 Supp. (3) SCR 618] and (2) Tata Iron & Steel Co. Ltd. v. S.N. Modak [1965 (3) SCR 411] have taken the view that if the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short 'the Act'), the order of dismissal becomes ineffective from the date it was passed and, therefore, the employee becomes entitled to wages from the date of dismissal to the date of disapproval of the application. Another Bench of three learned Judges in Punjab Beverages Pvt. Ltd., Chandirarh v. Suresh Chand & Anr. [1978 (3) SCR 370] has expressed the contrary view that non-approval of the order of dismissal or failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative; failure to apply for approval under Section 33(2)(b) would only render the employer liable to punishment under Section 31 of the Act and the remedy of the employee is either by way of a complaint

under Section 33A or by way of a reference under Section 10(1)(d) of the Act. It may be stated here itself that there was no reference in this decision to the two earlier decisions aforementioned."

Constitution bench of Hon'ble Supreme Court held that the requirement of proviso to Section 33 (2) (b) of Industrial Disputes Act, 1947 is mandatory. Failure to make applications for approval of the orders of discharge or dismissal or withdrawal of such applications after making it, renders the order of discharge or dismissal void and inoperative. Hon'ble Supreme Court overruled Punjab Beverages (P) Limited V Suresh Chand, (1978) 2 SC C 144 (FB – 3 judges bench), which took contrary view that the remedy of the employee in such a case lay in Sections 31, 33 (a) and 10 (1) (d) of Industrial Disputes Act holding that the failure to make applications under Section 33 (2) (b) would not render the order of dismissal inoperative.

31. According to the ratio of constitution bench of Hon'ble Supreme Court of India, if the approval is not obtained under Section 33 (1) (b) or (2) (b) of Industrial Disputes Act, the order of termination shall become ineffective. It is no doubt that this proviso is a shield against 'victimization' and 'unfair labour practice', mandating employer to pay one month wages and an application to be made before the Tribunal for approval of action taken by him. It is undisputed fact that neither one month pay has been paid nor any approval of this Tribunal was obtained by the employer in the present case in hand.

32. Hon'ble Madras High Court in K. N. Asokan V Presiding Officer, Labour Court, Coimbatore and anr., 2010 LLR 976 (Mad), has held that the termination of the workman in reorganisation of work in the establishment will neither be construed as dismissal or discharge from service nor any alteration in conditions of service. Hon'ble Madras High Court has referred Jaipur Zilla Sahakari Bhoomi Vikas Bank Limited V Ram Gopal Sharma and ors., (2002) SC C 244 and reiterated its ratio as stated above. Hon'ble Madras High Court has referred Para 9 of the judgement of Hon'ble Supreme Court in L. Robert D'Souza V Executive Engineer, Southern Railway, AIR 1982 SC 854, which reads as under –

"9. It was obligatory upon the employer, who wants to retrench the workmen to give notice as contemplated by clause (a) of Section 25F. When a workman is retrenched, it cannot be said that change in his conditions of service is effected. The conditions of service are set out in Fourth Schedule. No item in Fourth Schedule covers the case of retrenchment. In fact, retrenchment is specifically covered by Item 10 of the Third Schedule. Now, if retrenchment which connotes termination of service, cannot constitute change in conditions of service in respect of any item mentioned in Fourth Schedule, Section 9A would not be attracted. In order to attract. 9A the employer must be desirous of effecting a change in conditions of service in respect of any matter specified in Fourth Schedule. If the change proposed does not cover any matter in Fourth Schedule. Section 9A is not attracted and no notice is necessary. (see Workmen of Sur Iron & Steel Co. (P) Ltd. v. Sur Iron & Steel Company (P) Ltd. (1971) 1 Lab LJ 570 (SC); Tata Iron & Steel Company Ltd. v. Workmen, (1973) 1 SCR 594: AIR 1972 SC 1917: (1972) Lab IC 1128; Assam Match Co. Ltd. v. Bijoy Lal Sen, (1974) 1 SCR 116: AIR 1973 SC 2155: 1973 Lab IC 1158. Thus if Section 9A is not attracted the question of seeking exemption from it in the case falling under the proviso would hardly arise. Therefore, neither Section 9A nor the proviso is attracted in this case. The basic fallacy in the submission is that notice of change contemplated by Section 9A and notice for a valid retrenchment under Section 25F are two different aspects of notice, one having no correlation with the other. It is, therefore, futile to urge that even if termination of the service of the petitioner constitutes retrenchment it would nevertheless be valid because the notice contemplated by Section 25F would be dispensed with in view of the provision contained in Section 9A, proviso (b). That apart, it is an indisputable position that none of the other pre-conditions to a valid retrenchment have been complied with in this case because the very letter of termination of service shows that services were deemed to have been terminated form a back date which clearly indicates no notice being given, no compensation being paid and no notice being given to the prescribed authority. Therefore, termination of service, being retrenchment, for failure of comply with Section 25F, would be viod ab initio."

33. Hon'ble Delhi High Court in BA Security Agents Employees Union V Regional Labour Commissioner and ors., 2010 LLR 1083 (Del), has held that Section 33 of the Industrial Disputes Act providing for approval of dismissal from service of a workman by the authority before whom the industrial dispute is pending will not be attracted for the discharge of concerned workmen who were appointed on contract basis. The relevant Paras 7 to 11 read as under –

"7. This writ petition was taken up for hearing first on 2nd March, 2010. On a bare reading of the language of Section 33, it was put to the counsel for the petitioner as to how, when the dispute itself raised was as to the right to regularization, could section 33 prohibit the employer from terminating the employment of the employees even before being directed to regularize? Would it not amount to granting relief to the workmen before decision on the same by the Labour Court? It was further felt that when the employment is contractual with the contract coming to an end shortly after the dispute is raised, how could the act of the employer of not renewing the contract or not giving duty to the workmen after the expiry of the contract period be regarded as altering the conditions of services within the meaning of

Section 33(1)(a) or discharge or dismissal owing to misconduct within the meaning of Section 33(1)(b) of the Act. Both counsels had attempted to canvas their respective cases on the basis of the bare language of the Section. However, being unsatisfied, this Court called upon them to examine as to how the courts have dealt with the said provision.

8. The counsel for the petitioner on the next day i.e. 3rd March, 2010 contended that the question is no longer res integra and has been considered by a Division Bench of the Orissa High Court in Orissa Oil India Mazdoor Union Vs. Union of India MANU/OR/0082/1989. In that case also the employment was temporary, terminable at any time without assigning any reason and for a fixed time spell; dispute of regularization was raised on 28th February, 1989 and in accordance with the contract, termination effected on 21st March, 1989. A writ petition was filed with a prayer for declaring the termination to be illegal and for a direction to the employer to regularize their services. The termination was assailed on the ground that during pendency of conciliation proceedings, it was not open to the employer to pass any order of termination. Reliance was placed also on Section 33(1) of the Act. The Division bench of the Orissa High Court held that Section 33 (1) places a complete ban on the alteration to the prejudice of the workman concerned, of any conditions of service applicable to him without express permission in writing of the authority dealing with the pending proceeding. The argument that appointment being for a fixed time spell, Section 33 has no application was held to be without any substance. It was held that there was no exception provided in Section 33 in respect of time-spell employments and therefore the action of the employer in terminating the workmen concerned was held to be not sustainable and quashed and the workmen were directed to be treated to be continuing in service and being entitled to all service entitlements.

9. The counsel for the petitioner also invited attention to Lokmat Newspapers Pvt. Ltd. v. Shankarprasad, 1999 LLR 849 (SC): (1999) 6 SCC 275: 1999 Lab IC 2826 to contend that once the conciliation proceedings had been initiated, Section 33(1) comes into play and on Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma (2002) 2 SCC 244: 2002 Lab IC 513: 2002 LLR 237 (SC), to contend that Section 33(1) is mandatory in nature. It is contended that the respondent no.1, without giving any reason has failed to lodge a complaint of the offences committed by the respondents 2 to 5.

10. However, my research finds this Court to have taken a view contrary to that of the Orissa High Court. Recently a Single Judge of this Court in Jai Pal Singh Vs. Delhi Development Authority MANU/DE/1718/2009 negated the argument of non compliance of Section 33(1) of the Act in the case of a Security Guard employed by the DDA on contract basis for a period of six months at a fixed salary with the period of employment coming to end on 30th April, 1991; the union, of which the said workman was a member, before that day filed a writ petition and in which the DDA was directed to maintain status quo; the writ petition was dismissed on 6th January, 1993 and the DDA dispensed with the services of the workman in terms of contract of employment w.e.f. 3rd March, 1993. Notwithstanding the pendency of an industrial dispute regarding regularization of contractual employees of DDA on that date, it was held that DDA was not required to obtain the permission of the authority before which the dispute was pending. In holding so, the Single Judge relied upon the judgment dated 6th January, 1993 of the Division Bench of this Court in CW(P) 1305/1991 titled Delhi Pradesh Rajdhani Mazdoor Union (Regd.) v. DDA. I have called for a copy of the said unreported judgment of the Division Bench. In that case also the DDA had employed the members of the petitioner union as security guards on a term contract and the union had moved the Industrial Tribunal for regularization of their services. The union by way of the writ petition sought a direction from this Court that the services of its members be not terminated during the pendency of the dispute before the Industrial Tribunal as they were protected under Section 33 of the Act. The Division Bench of this Court held that the DDA in terminating the services in terms of the contract had not in any manner varied the terms of service of the members of the petitioner union in that case and therefore there was no question of seeking any express permission in writing of the authority before which the proceedings were pending, because the services got extinguished by efflux of time on the expiry of their contract. It was further held that if the DDA had tried to terminate the services before the contract was over then the workmen would have been protected under Section 33. It was further held that the question of regularization was already pending before the Labour Court.

11. The aforesaid dicta of the Division Bench of this court is fully applicable to the facts of the present case also."

34. The very substance and the legal point involved in the present case is similar to the legal point involved before the single bench of Hon'ble Delhi High Court in B.A. Security (supra) and before the division bench of Hon'ble Delhi High Court in Delhi Pradesh Rajdhani Mazdoor Union (supra). On the basis of aforesaid discussion, it has been concluded that the subjective condition made in the bid / tender became infructuous

due to non-existence of interim order passed in Reference (CGITA) No. 21/2016. The complainants / drivers or their union 'Glorious Petroleum Mazdoor Sangh' were neither the parties to the aforesaid Reference (CGITA) No. 21/2016 nor were they parties to the settlement dated 18.07.2012, which too was limited only to five years, ending on 17.07.2017. The services of the complainants / drivers got extinguished by efflux of time on the expiry of their relevant contracts on 20.03.2019 or so. If the opposite parties / contractors had tried to terminate the services of the complainants before the contract was over, then the complainants would have been protected under Section 33 of Industrial Disputes Act. The act of the complainants' employer of not renewing the contract or not giving duty to the complainants / drivers after the expiry of contract period, can not be regarded as change in conditions of services within the meaning of Section 33 of the Industrial Disputes Act, 1947. The second point is accordingly decided in negative against the complainants. The complaint stands dismissed.

35. The award is passed accordingly.

Let two copies of the Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2023

का.आ. 1853.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगरेनी कोलियरी कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, हैदराबाद के पंचाट (पहचान **संख्या 190/2014**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/11/2023** को प्राप्त हुआ था।

[फा. सं. एल. 22012/46/2014-**आई.आर.** (सी.एम-II)]

मणिकंदन एन, उप निदेशक

New Delhi, the 21st November, 2023

S.O. 1853.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 190/2014) of the Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD as shown in the Annexure, in the industrial dispute between the Management of Singareni Colliery Company Ltd. and their workmen, received by the Central Government on 07/11/2023

[F. No. L-22012/46/2014 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 4th day of October, 2023

INDUSTRIAL DISPUTE No. 190/2014

Between:

The President,

(Sri Bandari Satyanarayana)

Rashtriya Collieries Mazdoor Sangh (RCMS),

Rajkumar Complex, Saibaba Temple Road,

Jaffar nagar, Mancherial – 504208.

Adilabad Distt. (A.P.) ….. Petitioner

AND

The General Manager,

M/s. Singareni Collieries Company Ltd.,

Mandamarri Area, Mandamarri – 504 231.

Adilabad District.(A.P.) …. Respondent

Appearances:

For the Petitioner : Sri Bhagwanth Rao, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/46/2014-IR(CM-II) dated 8.8.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

THE SCHEDULE

"Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, Adilabad Distt. in terminating the services of Sri Gujjula Bhaskar, Ex-Coal Filler, MK-4 Inc., Mandamarri Area with effect from 31.12.2007 is justified or not? If not, to what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 190/2014 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

It is submitted that the Petitioner was appointed as an employee on 3.1.1988, and he become permanent Employee during the course of service in the Company. The Service conditions of the Petitioner are governed by various standing orders of Company. It is submitted that the Petitioner could not attend to his duties during the year 2006 due to his ill-health, then Respondent issued a show cause notice dated 22.7.2007 and the Petitioner submitted a Reply on 19.8.2007 which was not considered by the Respondent Company and he was dismissed from Service through proceedings No. MMR/PER/D/072/6748, dated 31.12.2007. It is submitted that the Petitioner preferred an appeal to the Higher authorities which went in vein, and authority concerned mechanically upheld the orders of Chief General Manager, Mandamarri Division. It is further submitted that the Petitioner was put in 3 years of service without any red remark and the Petitioner has got still 20 years of service for superannuation. Further, it is submitted that removing from services of the Respondent, person who rendered more than 2 years of qualified service is arbitrary, illegal and against to the principles of natural justice and also against to the Provisions of the Standing Orders of the Company. It is submitted that the Petitioner was given employment for the post as Coal Filler. So giving employment to the Petitioner is subject to availability of vacancy of work. Whenever Petitioner used to go for job there is no work but there appears to be a contributory negligence. It is submitted that Respondent company one way given employment and other way dismissed from service. The intention of the company is crystal clear i.e., to remove the masses i.e excessive labour. Further, it is submitted that the company adopted unfair labour practice and victimization. The Petitioner could not opt Rs.3,00,000/- as compensation in lieu of employment, but opted employment. Now the Petitioner has got re-option to claim compensation of Rs. 5,00,000/- in lieu of dependent employment through Settlement 20.11.2009 if the employment is not provided. It is submitted that the action of the Respondent amounts to "Hire and Fire" which has no force in the Industrial Jurisprudence. It is submitted that the "Award And Settlements" both are decrees in terms of Industrial disputes Act. Further, it is submitted that there was settlement before the Regional Labour Commissioner at Hyderabad, that those who were removed from 1.1.2000 to 30.12.2010, those cases can be considered by the Management as per the Circular P.40/5911/IR/33, dated 10.3.2000 and the Petitioner was called for interview, but the case of the petitioner was not considered for re-employment as per the settlement. If the petitioner was given employment he would have been put in more than additional 20years of service. Therefore, non-consideration of settlement by the company is very bad and against the law. That the Respondent did not conduct enquiry properly and no documents were given to the Petitioner and no subsisting allowance was paid to him. The Respondent obtained thumb impressions on enquiry report and conducted enquiry and Petitioner do not know the English language and enquiry conducted by the Respondent without mentioning contents therein is arbitrary, illegal and against to the Principles of natural Justice. That the Petitioner prays the Hon'ble Court to decide the validity of Domestic enquiry as Preliminary issue. It is submitted that after removal from the service by the Respondent to the Petitioner the Petitioner and children of Petitioner are fallen on roads with untold sufferings. The relationship between the Petitioner and Respondent is still continuing and the Petitioner not yet reached the age of superannuation. Hence, prayed to direct the Respondent to reinstate the Petitioner into Service with continuity and other attendant benefits and with full back wages, by setting aside dismissal order passed by Respondent.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

It is submitted that the RCMS Union who raised the dispute before the conciliation officer, has not filed any Claim Statement before this Hon'ble Tribunal and as such Sri Gujjula Bhaskar who filed the Claim Statement is not

maintainable and considering that the petitioner-union has no case to represent before this Hon'ble Tribunal. It is submitted that the petitioner was dismissed from the services of the Company on proved charge of absenteeism vide letter No. MMR/PER/ D/072/6748 dated 28.12.2007 w.e.f. 31.12.2007. It is submitted that there is an abnormal delay of about 6 years in raising the dispute by the Petitioner and therefore the petition is liable to be dismissed on the ground of delay and latches. It is prayed that this Hon'ble Tribunal may be pleased to decide the delay in raising the dispute as a preliminary issue. It is submitted that the delinquent workman was dismissed on proved charges after conducting a detailed domestic enquiry duly following the principles of natural justice. That the validity of domestic enquiry be decided as a preliminary issue. In this regard, it is submitted that this Court permit the respondent to produce the evidence in case it is held that domestic enquiry is not valid. It is submitted that the Petitioner, Sri Gujjula Bhaskar, S/o Rajamallu as mentioned in his Claim Petition filed before this Hon'ble Tribunal, Employee Code 2035475, Coal Filler, MK.4 Incline, Mandamarri Area of the Respondent Company, was initially appointed in the Company on 30.3.1988 and later regularised as Coal Filler. While he was working at MK.4 Incline, Mandamarri Area, he had put in just 89 musters during the calendar year 2005 and remained absent to duties unauthorisedly on all other days in the year, which constituted misconduct under Company's Standing Orders No.25.25. Hence, he was issued with a charge sheet bearing No. MMR/MK4/R/008/Absents/2006/229, dated 16.10.2006 under Company's Standing Orders No. 25.25 for the misconduct committed by him which reads as follows:

"25.25: Habitual late attendance or habitual absence from duty without sufficient cause."

It is submitted that the petitioner received the charge sheet, and submitted his written explanation to the charge sheet issued to him dated 13.11.2006 wherein he submitted that due to his ill health he had put in 89 musters only during the year 2005, henceforth he will be regular to duties, requested to excuse his mistake. His explanation was found to be not satisfactory, hence an enquiry was ordered. An enquiry notice No.MMR/MK4/EN/4992A, dated 9.11.2006 was issued advising him to attend enquiry on 13.11.2006. It is submitted that Petitioner fully participated in the enquiry and he was given full and fair opportunity to defend his case. Petitioner attended and fully participated in the enquiry and he was given full and fair opportunity to defend his case. Before commencing the enquiry proceedings, the Enquiry Officer had explained the enquiry procedure. The petitioner having understood the procedure and at his free will took part in the enquiry proceedings. The Enquiry Officer started the enquiry proceedings only when the charge sheeted employee expressed his readiness to take part in the proceedings. Further, the Enquiry Officer had offered the opportunity of availing the services of defence assistant but the petitioner did not avail the same. The Presenting Officer and the management witnesses deposed their evidence in the presence of the petitioner, which was duly recorded by the Enquiry Officer and explained to the charge sheeted workman in Telugu. Further, the documentary evidence was produced by the management in the presence of the petitioner, to substantiate the charge leveled against the petitioner in the enquiry and explained in Telugu by the Enquiry Officer. The petitioner did not cross-examine the management witnesses when the opportunity was afforded to him and voluntarily pleaded guilty of charge leveled against him. In his deposition during the course of enquiry, the petitioner submitted that he remained absent on the dates mentioned in the charge sheet and that the same is mistake on his part. He accepted his mistake and pleaded guilty of the charge leveled on his own. He stated that he remained absent due to two wheeler self-accident. He further submitted that he did not obtain prior sanction of any leave or sick for the said period and that he got no medical treatment slips or reports to substantiate his claim and accepted that remaining absent from duty from January 2005 to December, 2005 for a total period of 223 days is mistake on his part and assured to be more careful and will not remain absent unauthorisedly. Inspite of giving opportunity, he failed to establish the cause cited by him for his unauthorized absence from duty and failed to produce valid and relevant evidence. On the other side from Management side the witness produced Attendance Registers, Paid pay sheets from January to December, 2005 and leave register for the year 2005 and the petitioner verified the same and admitted that the absents were recorded correctly. These records for 12 months period established the charge levelled. The Enquiry Officer on the basis of evidence adduced in the enquiry and after appreciating all the recorded evidence, submitted his report in which it was held that petitioner is guilty of the charge leveled against him under Company's Standing Order No.25.25. It is submitted that the petitioner was supplied Enquiry proceedings, Copy of the report and letter advised to submit his representation, if any, against the findings of the enquiry officer within seven days of receipt of the letter. The petitioner acknowledged receipt of the letter dated 22.07.2007 along with its enclosures but made no representation against the findings of the Enquiry Officer. It is submitted that the petitioner was counseled on 30.10.2007 along with his wife. In the counseling the petitioner informed that he suffered fracture in his right hand and suffered from back pain in a road accident and assured to be regular to duties and would put in 20 filling musters per muster. Keeping in view his assurance, the petitioner was given one month time from 01.11.2017 No.MMR/PER/D/072/5646, vide letter dtd.1.11.2007 to enable him to put in 16 filling musters and fill two and more tubs per muster, but failed to keep up his promise. It is submitted that the Disciplinary Authority after going through the entire enquiry proceedings, explanation dated 13.11.2006 of the petitioner and after evaluating all the evidence on record concurred with the findings of the enquiry officer. Since the charge framed and proved in the enquiry was grave and serious in nature warranting punishment of dismissal and after considering his attendance over five calendar years viz., 2003 - 136 musters; 2004 - 131 musters; 2005 - 089 musters; 2006-038 musters and 2007- 030 musters, and after finding that there was no improvement in his attendance and as there was no extenuating circumstance to take a lenient view, imposed the penalty of dismissal with effect from 31.12.2007 vide letter No.MMR/PER/D/072/6748, dated

28.12.2007. It is further submitted that the petitioner was a chronic and habitual absentee and did not put in at least 190 attendances as expected from an underground workman in any of the calendar years from 2003 to 2007. Even though he was counselled and given opportunity to correct himself by being regular to duties, he failed to do so. His average attendance over 5 calendar years is 085 musters per year which is far below the bench mark of 190 musters. Further, he remained absent from duty without sanctioned leave, sick or sufficient cause and did not bother to communicate to the unit authorities about his inability to attend to duties. Further, the petitioner assured that he would be regular to his duties. However, the petitioner did not keep up his promise to improve his attendance. He did not at least inform or communicate the reasons of his absence to the mine authorities at any point of time, which clearly establish the fact that he was not interested in his job. The Respondent Company has been operating Dispensaries, Area Hospitals and Main Hospital to extend medical facilities/aid to its employees, their dependant family members. The petitioner, if really was suffering from health problems, he ought to have reported sick in Colliery Hospital; he ought to have requested for sanction of leave to his credit or for sanction of loss of pay leave, but without availing these channels, he chose to remain absent from duties unauthorizedly and attributing his absence to road accident without substantiating the same. Therefore, the management was compelled to dismiss the petitioner, from the service of the Company with effect from 31.12.2007 on proved charge. The contention of the petitioner that since he got another 20 years of service for superannuation, removing the service of the petitioner with more than 2 years of qualified service is arbitrary, illegal and against Principles of Natural Justice and also against the provisions of Standing Orders of the Company is totally incorrect and meritless. If he had left over service of 20 years, the petitioner had to be very careful and discharge his responsibilities and duties with commitment. Length of service already rendered and the period of service left over are not criteria for initiating disciplinary action and imposing penalty. Depending upon the seriousness of the misconduct committed and the gravity of the misconduct established, penalty will be imposed. The action of respondent in dismissing the petitioner is neither arbitrary, illegal nor against the Principles of Natural Justice and also not against the provisions of Standing Orders as claimed by the petitioner. The petitioner is not bringing out the facts of his status as an employee in the company and also the procedure adopted by the Respondent Company in providing him job. The petitioner at one end claims that he was a regular employee and on the other hand submits that he was not provided employment on regular basis but was shown employment subject to availability of vacancies. Both do not go parallel, as both the averments are contradictory. In fact the petitioner was never returned after booking his IN muster (attendance) as no such practice is there in Respondent company to return the employees who report for duty and book their attendance. Respondent already introduced Voluntary Retirement Scheme (Golden Handshake); Special Female Voluntary Retirement Scheme; Voluntary Retirement Scheme (Low Productive Employees) but never used the disciplinary action of dismissal to eliminate surplus manpower. The Respondent company never indulged in unfair labour practice and victimization as alleged by the petitioner. It is submitted that respondent company had entered into a Memorandum of Settlement to provide an opportunity to the employees dismissed on the ground of absenteeism for appointment as Badli Fillers afresh. In the Memorandum of Settlement dated 09.08.2011 arrived at with the then Recognized Union SCWU AITUC it was agreed to review the cases of employees dismissed on account of absenteeism during the period from 01.01.2000 to 31.12.2010 and the conditions are that (1) the dismissed employee should be below 55 years as on the date of MoS i.e. as on 09.08.2011; (2) the dismissed employee should have put in 190 musters if an underground employee and 240 musters if surface employee, in any two calendar years out of the 5 years prior to the year of dismissal (or) should have put in 150 musters (underground employee), 200 musters (surface employee) every year in the previous four years of dismissal year and (3) these dismissed employees will be interviewed by High Power Committee and on the basis of High Power Committee's recommendations subject to medical fitness the candidate will be given appointment as Badli Filler Underground. The petitioner was issued call letter for attending an Interview on 23.04.2012 at Head Office, Kothagudem of the Respondent Company in line with the terms of MoS dated 09.08.2011. However, in the present case, the petitioner is not satisfying the stipulations and hence his case was not considered for appointment afresh as Badli Filler. Without qualifying himself for reappointment the petitioner cannot claim that if he were considered for reemployment as per Settlement he would have put in 20 years of service is not tenable. After lapse of time, Petitioner claiming that the enquiry proceedings were not conducted properly, the petitioner could have registered his objections, protest and not affixed his signature/thumb impression on the enquiry proceedings at the time of participating in the enquiry or when he was supplied the copy of enquiry proceedings and report. Without doing so all these years, now after a lapse of 06 years the petitioner is claiming that enquiry was not conducted properly which is an afterthought and hence the same is denied. The enquiry officer/respondent company did not obtain the thumb impressions of the petitioner on the enquiry proceedings. The Enquiry Officer recorded the proceedings in English but the entire proceedings were held in Telugu and in presence of the petitioner. Further the Enquiry Officer had explained the recorded proceedings in Telugu to the petitioner and the petitioner after satisfying that the same were recorded correctly then only affixed his signatures on the proceedings without any protest or objections. Hence the allegation of the petitioner that the respondent obtained thumb impressions on enquiry report and that the enquiry was conducted by the Respondents without mentioning the contents there and hence the same is arbitrary, illegal and against principles of natural justice is totally incorrect. As regards the contention that the enquiry was conducted by the Respondent without mentioning the contents there in, it is to submit that the Enquiry Officer conducted the proceedings in presence of the petitioner and also explained the enquiry procedure and started the proceedings only when the petitioner was ready to take part in the proceedings. Further, the Enquiry Officer at

every stage, explained the recorded proceedings, in Telugu to the petitioner and the petitioner also without any objection and protest and without raising any doubts affixed his signatures on the proceedings since he was satisfied that the proceedings were correctly recorded in his presence. It is submitted that the Petitioner should have been more careful and conscious of his responsibilities, towards his family members and towards his job. He failed to realize his mistake in spite of giving opportunities and paid no heed to the advice of his higher authorities in regard to be regular to duties. For the fault and mistakes of the petitioner he cannot hold the respondent Company responsible. It is the petitioner himself who has to be blamed for this situation, which is the result of his negligent behaviour and callous attitude towards his job. In view of above, it is prayed to dismiss the claim petition as devoid of merits.

4. The enquiry conducted by the Respondent is held legal and valid by order dated 22.7.2019.

5. Heard arguments of Learned Counsels for both the parties u/s. 11A of the I.D. Act, 1947 as well as perused written arguments.

6. **On the basis of pleadings of both the parties, following points emerge for determination:-**

I. Whether the industrial dispute has been raised by the Petitioner after an inordinate delay of 6 years and the same is liable to be dismissed on the ground of delay and latches?

II. Whether the domestic enquiry conducted against the Petitioner is legal and valid?

III. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in terminating the Petitioner workman from service is legal and justified?

IV. Whether the punishment imposed upon the Petitioner for his misconduct under Clause 25.25 of Company Standing Orders is commensurate to the charges proved and the same is disproportionate?

V. To what relief the Petitioner is entitled?

FINDINGS

7. **Point No.II**: It is submitted in this regard that the Departmental Enquiry held against the workman has been held legal and valid vide order dated 22.7.2019.

This point answered accordingly.

8. **Point No.I**: The counsel for the Respondent submits that Sec.10(2) of I.D. Act, 1947 provides that the application for raising industrial dispute shall be made to the Labour Court or Tribunal before expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise, termination of service as specified in the sub-section(1). Since the Petitioner was dismissed from the service of the Company on proved charge of absenteeism vide order dated 31.12.2007 with immediate effect i.e., 31.12.2007, there is abnormal delay of more than 6 years in raising the dispute by the Petitioner. Therefore, present petition is liable to be dismissed on the ground of delay and latches. It is also submitted that the question of delay in raising the dispute should be decided as preliminary issue. As per averment in the petition by the Petitioner, he was terminated from the service by the Respondent vide order dated 31.12.2007 on the proved charge of misconduct under the Departmental enquiry. Whereas the industrial dispute has been filed by the Petitioner in the year 2014 after the delay of 6 years from date of termination but, Petitioner has no where mentioned or explained the reason for such delay in raising the ID. Therefore, the claim of Petitioner has become stale due to delay and latches.

In this context, following decisions of Hon'ble Apex Court are relevant.

a) In the case of Haryana Sate Cooperation Land Development Bank Vs. Neelam reported in2005(5) SCC 91, have held,

"that a delay of seven years in approaching the Labour Court to be relevant factor to refuse relief of reinstatement;"

b) In the case of State of Karnataka and another Vs. Ravi Kumar reported in 2009 13 SCC 746, Hon'ble Apex Court have held,

"*that long delay in seeking reference of the dispute has rendered the reference State and it should have been rejected by the Labour Court."*

c) In the case of Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar AIR 2006 SC 2670 Hon'ble Apex Court have held,

"7. However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted ata paragraph 6 as follows:

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since heel settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on

which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

d) In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) the position was reiterated as follows *(at para 17) :*

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in M/s. Shalimar Works Ltd. v. Their Workmen (AIR 1959 SC 1217)(supra), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of the most of the old workmen was held to be fatal in Mis. Shalimar Works Limited v. Their Workmen (AIR 1959 SC 1217\supra), In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others AIR 2000 SC 839(supra) , a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Sammanta and others v. Union of India and others (1993 AIR SCW 2214 (supra), it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees under P and T Department v. Union of India (AIR 1987SC 2342Xsupra), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

e) In the case of **Ratan Chandra Sammanta and others Vs. Union of India and others 1993 AIR SCW 2214**, wherein Hon'ble Apex Court have held that,

" Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed."

Therefore, in view of the law laid down by the Hon'ble Apex Court as discussed above and in the absence of any plausible explanation by Petitioner for such inordinate delay in filing the present claim of the Petitioner is barred by limitation due to inordinate delay and latches.

Thus, Point No.I is answered accordingly.

9. **Point No.III**: Petitioner in petition states that he was appointed as employee on 3.1.1988 and became permanent during the course of service in Respondent Company. Petitioner could not attend to his duties during the year 2006 due to his ill-health and show cause notice dated 22.7.2007 was issued to him. Petitioner submitted a reply on 19.8.2007, that could not be considered by the Respondent Company and dismissed the services of the Petitioner through proceeding No.MMR/PER/D/072/6748, dated 31.12.2007.

10. On the other hand, Respondent submits that the Petitioner was initially appointed in the Company on 30.3.1988 and regularized as Coal filler. While he was working at MK.4 Mine, Mandamarri Area, he had put in 89 musters during the calendar year 2005 and remained absent to duties unauthorizedly on all other days in the year which constituted misconduct under Company's Standing Orders No.25.25. Hence, he was issued with a charge sheet bearing MMR/MK4/R/008/Absents/2006/229 dated 16.10.2006 under Company's Standing Orders No. 25.25 for the misconduct committed by him which reads as follows:

"25.25: Habitual late attendance or habitual absence from duty without sufficient cause."

The petitioner had received the charge sheet, and submitted his written explanation to the charge sheet issued to him wherein he submitted that due to his ill health he had put in 89 musters only during the year 2005, henceforth he will be regular to duties, not attending to duties on his part is mistake and requested to excuse him. However, he failed to establish the alleged ill-health by producing medical reports, treatment slips etc.. His explanation was examined and found to be not satisfactory, an enquiry was ordered. An enquiry was conducted on 13.11.2006 adhering to the principles of natural justice. Before commencing the enquiry proceeding, the Enquiry Officer had explained the enquiry procedure to Petitioner. Petitioner had fully participated in the enquiry proceeding. The Enquiry Officer has offered the opportunity of availing the services of defence assistant but the Petitioner did not avail the same. The Presenting Officer and the management witnesses deposed their evidence. Further, documentary evidence was produced by the management to substantiate the charges leveled against the petitioner. Petitioner accepted his mistake and pleaded guilty of the charge levelled on his own. He stated that he remained absent due to two wheeler self-accident. He further submitted that he has no documentary evidence to substantiate his claim. The Enquiry Officer on the basis of evidence adduced in the enquiry and after appreciating all the recorded evidence, submitted his report in which the petitioner was held to be guilty of the charges leveled against him under Company's Standing Orders No.25.25. Respondent also submits that the petitioner was supplied a copy of the Enquiry report and proceedings vide letter No. MMR/PER/D/072/3980 dated 22.7.2007, wherein he was advised to submit his representation if any, against the findings of the enquiry officer within seven days of receipt of the letter. The petitioner received the letter dated 22.7.2007 along with its enclosures and on this, the petitioner made no representation. It is submitted that the Disciplinary Authority after going through the entire enquiry proceedings, and after evaluating all the evidence on record, concurred with the findings of the enquiry officer. Since the charges levelled and proved in the enquiry were grave and serious in nature warranting punishment of dismissal and as there were no extenuating circumstances to take a lenient view, the petitioner was dismissed from Company's Services w.e.f. 31.12.2007. It is to mention here that the petitioner was a chronic and habitual absentee and did not put in at least 190 attendances as expected from an underground workman during the years from 2003 to 2007 and he remained absent from duty without sanctioned leave, sick or sufficient cause and did not bother to communicate to the mine authorities about his inability at any point of time, which clearly establish the fact that he was not interested in his job. Further, it is submitted that Respondent has been operating Dispensaries, Area Hospitals and Main Hospital to extend medical facilities/aid to its employees, their dependant family members. The petitioner, if really was suffering from health problems, he ought to have reported sick in Colliery Hospital; he ought to have requested for sanction of leave to his credit or for sanction of loss of pay leave, but without availing these channels, he chose to remain absent from duties unauthorizedly. Therefore, the management was constrained to dismiss the petitioner, from the service of the Company with effect from 31.12.2007.

11. The perusal of the documents pertaining to Departmental Enquiry filed by the Respondent goes to show that the Petitioner workman has put in only 89 musters in a year wherein as per rule he is required to maintain 190 musters in a year. Moreover, Petitioner remained absent from duties without sanction of the leave from Competent Authority and he did not intimate authority about his leave/absence within time as per rule. Petitioner has taken the plea for unauthorized absence from duties that due to illness he could not attend duty. Now, he can not blame the Respondent for the action of the Respondent in terminating him from service. Moreover, he has taken plea that he fell ill during the absent period but neither he tried to intimate the authority about his illness nor he has filed any document pertaining to his illness or treatment. No evidence of treatment of illness has been filed by the Petitioner to corroborate his plea. No explanation furnished by him as to why he did not go to Company hospital for treatment. Therefore, in the absence of said explanation and evidence, the plea of Petitioner regarding his illness is not acceptable. Since charge levelled against Petitioner for misconduct of absenteeism from duty has been proved during the enquiry and domestic enquiry has been held legal and valid vide order dated 22.7.2019, the plea taken by Petitioner is not tenable.

12. Having perused the enquiry proceeding along with the enquiry report, I am of the view that Enquiry Officer has appreciated the evidence recorded during the enquiry and submitted his reasoned report holding the Petitioner guilty of the charges of misconduct. Therefore, no case is made out to hold that domestic enquiry suffers from any procedural lapse in following the principles of natural justice, thereby causing any prejudice to the rights of the Petitioner. Therefore, the action of the Respondent Management is held legal and justified.

This Point No.III is answered accordingly.

13. **Point No.IV**: Once domestic enquiry is held legal and proper, the next question arises whether the punishment imposed on the Petitioner is just and legal or is it disproportionate to the gravity of the charges. In this regard Respondent Counsel submits that the Petitioner remained absent from duty for long periods in the year 2005 without any sanctioned leave or without any intimation to the competent authority. It is also submitted that Petitioner was a chronic and habitual absentee and did not put in least 190 musters attendance during the years 2003 to 2007 also. The contention of the Respondent has not been countered by the Petitioner. However, the Petitioner had just put in 89 musters in the year 2005. Prior to the year 2007, or three consecutive years i.e., 2003 to 2006 Petitioner did not complete the required musters of duty. Therefore, the Petitioner's conduct towards regarding his

duty was negligent and delinquent and the Respondent employer has no option but to dismiss the Petitioner from the service. Since the Petitioner was chronic and habitual absentee and no employer would ever allow or support such behavior of his employee in such circumstances. The employer had therefore, every right to initiate domestic enquiry against the employee for such serious misconduct and behavior. Therefore, charge against the Petitioner was of serious nature of misconduct and order of dismissal passed against the Petitioner can not be faulted with or in any way disproportionate to the gravity of the charges, in other words, punishment of dismissal was proportionate with the gravity of the charges, hence deserves to be upheld. The following decisions are relevant on this point:-

1. Apex Court **in State of U.P. V. Ashok Kumar Singh 1996 (1) SCC 302, wherein the Apex Court had held:-**

"Having notices the fact that the first respondent has absented himself from duty without level on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

2. In the case of **North Eastern Karnataka R.T. Corpn. v. Ashappa decided on 12 May, 2006 wherein, the Apex Court had held:-**

"Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The Appellant runs a fleet of buses. It is a statutory organization. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The Respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the Respondent herein has to be treated lightly.

3. **In Delhi Transport Corporation v. Sardar Singh [(2004) 7 SCC 574], the Apex Court held**:

"11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised."

Therefore, in view of the fore gone discussion and decisions of Hon'ble Apex Court I am of the considered view that the order of dismissal passed against the Petitioner can not be faulted with or in any way disproportionate to the gravity of the charges.

Thus, Point No.IV is decided accordingly.

18. **Point No.V**: In view of the finding given in Point Nos. I to IV, the Petitioner is not entitled to get any relief and this petition is found to be baseless, hence, liable to be dismissed.

Thus, Point No.V is answered accordingly.

Result:

The action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, Adilabad Distt., in terminating the services of Sri Gujjula Bhaskar, Ex-Coal Filler, MK-4 Inc., Mandamarri Area with effect from 31.12.2007 is justified or not? Hence, petition stands dismissed. The workman is not entitled to any relief as prayed for.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 4th day of October, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 22 नवम्बर, 2023

का.आ. 1854.—आद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **कोलकता** के पंचाट (06/2006) प्रकाशित करती है।

[सं. एल 12012/98/2005-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 22nd November, 2023

S.O. 1854.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.06/2006*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen.

[No. L-12012/98/2005- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO.06 OF 2006

Parties : Employers in relation to the management of

Allahabad Bank/ Indian Bank

AND

Their Workman

Appearance:

On behalf of the Management: None

On behalf of the Workman : Mr. Somnath Chakraborty, Advocate.

Dated: 5th October, 2023

AWARD

Govt. of India, Ministry of Labour vide Order No. L-12012/98/2005- IRB-II dated 27-02-2006 in exercise of the power conferred under section 10(1)(b) and (2A) of the Industrial Dispute Act, 1947 has referred the following industrial dispute existing between the employers in relation to the management of Allahabad Bank and now Indian Bank and their workmen.

(1) "Whether the management of Allahabad Bank is justified in not offering regular employment as peon to Mr. Sushanta Kumar Das who passed the test/interview vide Sl. No.171 of the result declared by the bank dated 22-06-1998? If not, to what relief he is entitled to?"

(2) "Whether Mr. Sushanta Kumar Das worked as Casual Peon with Allahabad Bank during 1998 to 2004 at different branches under Siliguri region, and whether he was terminated by the bank w.e.f. 19-01-2004 while he was working with Gopalganj Branch –Siliguri Region? If so, whether he is entitled for reinstatement with back wages or not? If not, to what relief he is entitled?"

The facts in nut shell as alleged by the alleged workman in his claim statement are that he was engaged as a temporary Peon cum Farrash by the then Allahabad Bank, Gopalganj Branch, Malda in the year 1982 and he rendered his service as a temporary daily rated Peon cum Farrash till 19-01-2004, the day he was orally terminated from his said job. He has also stated that while working as a daily rated temporary casual Peon cum Farrash, he appeared for interview on 22-11-1993 for the post of Peon in view of advertisement published by the bank in the year 1993.

That Bank declared the result of such interview only in the year 1998 and in the said result his name appeared against Sl. No.171 of the merit list. Inspite of having qualified in the interview and his name having appeared in the merit list bank failed to issue any appointment letter. That finding no other alternative he approached different authorities of the bank through letters for issuance of appointment letter though he continued to work for the bank as a casual temporary Peon cum Farrash. He has also stated that he having rendered services from 1982 till 2004 and having worked for more than 240 days his service was terminated without complying the provision of section 25-F of the Industrial Dispute Act. Therefore, he has prayed for his absorption in a regular post w.e.f. from the date of interview with all financial benefits along with interest @ 18% p.a. and for declaration that his termination from the service as a casual temporary Peon cum Farrash w.e.f. 19-01-2004 was illegal.

The management of the then Allahabad Bank in its written statement has alleged that it being a Nationalised Bank it is governed by the recruitment rules which stipulates recruitment through Banking Service Recruitment Board in case of clerical cadre employees or through Employment Exchange or by public notification in the newspaper in case of subordinate cadre employees by holding test and interview.

It has alleged that the Govt. of India vide its approach paper dated 16-08-1990 directed the Nationalised Banks not to make any temporary appointment without prior approval of the Govt. Accordingly, the Govt. had framed guideline and procedure in the matter of recruitment and absorption of those temporary workmen who had worked for 90 days or more during the period from 01-01-1982 to 31-12-1989.

In view of the procedure laid down in the approach paper dated 16-08-1990, the management of the bank entered into a settlement with All India Allahabad Bank Employees' Co-ordination Committee on 17-11-1992. In view of such settlement the management of the bank invited applications from the employees who worked on temporary full time basis during the period from 11-01-1982 to 31-10-1992 including those daily rated employees of the erstwhile United Industrial Bank which was amalgamated with Allahabad Bank w.e.f. 31-10-1989, in preparing a merit list to fill up future vacancy in the post of full time Peon cum Farrash/full time Sweeper by holding written test and interview on 12-03-1993. The written test was conducted on 25-07-1993.

Further, it has admitted that the concerned workman who had not completed temporary engagement for more than 240 days participated in the written test.

In the meantime, an award was passed in Reference Case No. 21 of 1990 by this Tribunal and which was challenged before the Hon'ble High Court by filing Writ Petition No.879 of 1994 and C.R. No.9139 (W) of 1993. However, the management of the bank was allowed to conduct the written test for recruitment of full time Peon cum Farrah/full time Sweeper in view of Notification dated 12-03-1993, but was prevented to give any appointment without the leave of the Hon'ble High Court. Those two writ petitions were disposed of on 17th November, 1994.

On disposal of the above writ petitions, the bank started processing the recruitment of DRPs but the United Industrial Bank Asthayee Adhasthan Karmachari Samity, union of the employees of erstwhile United Industrial Bank filed a contempt case against the bank for violation of the Hon'ble High Court's order dated 17th November, 1994. That contempt application was disposed of on 2nd August, 1996.

That the management of the bank entered into another Memorandum of Settlement dated 27th November, 1997 with the workmen represented by Allahabad Bank Employees Coordination Committee in the matter of settlement dated 17th November, 1992 regarding absorption of temporary employees. In view of the settlement dated 27-11-1997, the management of the bank prepared the merit list of DRPs subject to approval of the Govt. Therefore, the management sought permission from the Govt. in terms of the approach paper to approve the merit list and to issue appointment letter to the qualified candidates from the list published by it in the year 1998. The Govt. by Notification No,.F-5/1/1/92 IR, New Delhi dated 20-01-1999 directed the bank that merit list should remain valid only for one year from the date of its preparation or till finalisation of next round of recruitment process as the case may be whichever is earlier.

United Industrial Bank Asthayee Adhasthan Karmachari Samity challenged the action of the bank before the Hon'ble High Court at Calcutta by filing a writ petition no.W.P. 1469 of 2002 which is still pending. Thus it has alleged, no recruitment could be given to any of the candidates on the basis of the merit list prepared in the year 1998 as no approval has been received from the Govt. till date.

It has further alleged, the alleged workman was engaged by the bank occasionally on casual basis purely for specific requirement on payment basis during the period from 1998 to 2004 i.e. on 'no work no pay' basis. He was never engaged continuously during such period and he was not terminated.

It has also alleged that the merit list prepared by the bank was subjected to approval from the Govt. and mere inclusion of the name of the alleged workman in the merit list does not accrue any legal right for appointment. The merit list was prepared under the scheme mentioned in the approach paper. Therefore, it has prayed for dismissal of the reference.

Record shows the alleged workman has examined himself as W.W. No.,1. He has filed Xerox copy of the application which he had filed for recruitment for the post of regular Peon cum Farrash, Xerox copy of the certificate issued by the Manager, Gopalganj Branch, Malda certifying that he worked as temporary PCA on daily wages for 182 days, interview call letter dated 18-10-1983 and written test call letter dated 19-07-1993 issued by the Zonal Office, Allahabad Bank, Siliguri and which have been marked as Exhibit-W-1, W-2, W-3 and W-4.

The record shows the management has also examined one of its Senior Manager Egene A Young as M.W.No.1. In the record I find five documents that have been produced by the management of the bank have been marked as Exhibit-W-1 to W-5 on formal proof being dispensed with vide order dated 09-12-2010. Unfortunately, during the final hearing of the present reference the management of the bank was found absent. Therefore, the present award is passed only hearing Ld. Counsel for the workman and on the basis of the materials available on the record.

Exhibit-W/2 shows that Manager, Gopalganj Branch, Malda had issued a certificate to the workman certifying that he worked for 182 days in the branch as temporary PCF, but workman has failed to produce the author of such certificate to prove genuineness of the same. Therefore, the same is not considered.

However, the management of the bank in its written statement has admitted the alleged workman used to work as a casual daily rated Peon on 'no work no pay basis' but has alleged the workman worked only for the period from 1998 to 2004. It has also been admitted that the alleged workman had applied for the post of Peon cum Farrash on the basis of recruitment advertisement dated 1993 published in compliance of guidelines provided in Approach Paper dated 16-08-1990. The alleged workman qualified in the written test and interview as he was ranked 171 in the merit list.

The bank has taken a plea that without approval of the Govt. it was unable to give appointment to those candidates qualified in the interview held in 1993. That it could not give appointment to the concerned workmen as till date Govt. has failed to issue approval letter. But it has failed to produce documents to prove that approval from Govt. was required to give appointment to selected candidates.

Be that as it may, the Exhibit-M/1 the Approach Letter dated 16th August, 1990 proves by issuing such letter the Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division), had put a ban on the recruitment of all temporary employees in the clerical and subordinate cadres in Nationalised Banks and had given necessary instruction to the banks how temporary employees already engaged by them can be absorbed to the regular post and provided one time opportunity to all temporary employees by taking 01-01-1982 as cut-off date i.e. all those who were engaged as temporary employees by the banks on or after 01-01-1982 may be considered for employment in terms of the scheme. Further, it provides only those temporary employees who had put in minimum temporary service of 90 or more days after the cut-off date i.e. 01-01-1982 would only be eligible for considering under the scheme and subject to settlement with the representative of the union and the management of each bank. It further provides modalities regarding test, interview etc. for absorption of temporary employees in subordinate cadre may be finalised by the individual bank in their own discretion keeping in view the main criteria proposed in the Approach Paper.

It also provides that recruitment shall be subject to statutory requirements regarding reservations. In case of ex-temporary employees who were recruited through Employment Exchange between 01-01-1982 and 31-12-1989, the DGET (Director General of Employment & Training) had agreed to exempt the management from the recruitment of Employment Exchange procedure for appointment of those temporary workmen as regular workmen of the bank but such exemption was not extended to those ex-temporary employees who were not initially sponsored by the Employment Exchange for appointment in the bank. In such cases the management was to apply to DGET for exemption giving full justification for making initial recruitment without reference to Employment Exchange. So, nothing is mentioned in the Approach Paper that bank need to seek approval from the Govt. in order to recruit a candidate qualified in the written test and interview.

However, the management has filed a copy of letter dated 20-01-1999 issued by the Govt. of India, Ministry of Finance, Department Economic Affairs (Banking Division) addressed to the Chief Executives of Public Sector Banks with regard to maintenance of wait list along with its written statement but which it has failed to exhibit for reason best known to it. The Govt. of India, Ministry of Finance in such letter has mentioned that wait list shall remain valid for a period of one year from the date of its preparation or till the finalisation of next round of recruitment/promotion as the case may be whichever is earlier.

In the present case no cogent evidence have come on record since when the concerned workman worked as a temporary Peon cum Farrash in the Allahabad Bank, Gopalganj Branch, Malda, but the fact permitting the concerned workman to appear in interview held in 1993 and acceptance of his application as one of the eligible candidates for the post of Peon cum Farrash by the bank goes to prove that concerned workman had indeed worked for the bank at least for a period of 90 days in a particular calendar year on and after 01-01-1982.

The Exhibit-M/2 shows that there was settlement between the management of the bank and the representative union on 17-11-1992 and later on 10-03-1995. That there was a settlement between the management and the union for appointment/absorption of those workmen who have worked for a period of 240 days or more in twelve consecutive months as Peon cum Farrash against the permanent post of Peon cum Farrash.

In the present case paragraph 1 of the claim statement itself prove that concerned workman never worked for a period of 240 days or more in a calendar year or in twelve consecutive months as Peon cum Farrash or in a calendar year. Therefore, in view of settlement dated 17-11-1992 and 10-03-1995 the workman was not entitled to absorption in the regular post as he has failed to fulfil the criteria of working for 240 days or more in a calendar year as agreed between the management and the representative union.

None the less the management of the bank in its written statement admitted that in view of the approach paper issued by the Govt., of India on 16-08-1990 it has published an advertisement for filling up the post of Peon cum Farrash in the year 1993 and invited application from the eligible candidates and also from those eligible employees already working in the bank in casual temporary posts and who fulfils the eligibility criteria as mentioned in Approach Paper dated 16-08-1990. It has also been admitted that the alleged workman was one of the candidates who applied for the post of Peon cum Farrash. In the result published in the year 1998 the name of the alleged workman appeared in the merit list against Sl. No.171.

Exhibit-M-4 andM-5 the copy of orders passed by the Hon'ble High Court of Calcutta in contempt case No. 1591 of 1995 arising out of Writ Petition No.879 of 1994 with C.R. No. 9139(W) of 1993 prima facie show when the then Allahabad Bank, in pursuance of the directions given in the Approach Paper issued by the Govt. of India on 16-08-1990 to stop recruitment of any temporary employee either in the clerical cadre or in subordinate cadre in different nationalised banks, had published vacancy advertisement and conducted written test and interview in the year 1993 then a union named United Industrial Bank Asthayee Adhasthan Karmachari Samity of erstwhile United Industrial Bank which was amalgamated with Allahabad Bank w.e.f. 31-10-1989 had raised a dispute for absorption of those DRPS on rolls of erstwhile United Industrial Bank and on the basis of which Reference Case no. 21 of 1990 was started and an award was passed in such reference case on 15-05-1992 and where it was held "that 592 DRPS who had completed 240 days of service in a year on or before the day indicated, would be entitled to employment, subject to availability of work in the Allahabad Bank and if necessary, in any of its branches in India. As far as the DRPS who are not included in the list of 592 DRPS are concerned they could not be automatically absorbed as in the case of said 592 DRPS, but in their cases, the Allahabad Bank would have to be guided by guidelines, rules, regulations and notification as applicable" and such award was challenged by filing the above writ petitions before the Hon'ble High Court, Calcutta being No., 879 of 1994 and C.R. No.9139(W) of 1993. They in such writ petitions have demanded absorption and regularisation of 592 DRPS of United Industrial Bank in the subordinate cadre of the bank before considering those candidates who have appeared in the interview held in the year 1993.

The Hon'ble High Court at Calcutta while disposing those two writ petitions on 17-11-1994 had given directions to the management of Allahabad Bank to complete recruitment to the subordinate cadre of the bank by absorbing from amongst 592 on the rolls of DRPs of United Industrial Bank who had completed 240 days in a year prior to 31st October, 1989 mentioned in the order of reference on the basis of which reference case no. 21 of 1990 was registered and thereafter to take steps for selection of other candidates on the basis of the result published in the examination already held.

Therefore, from the above facts it appears due to the pendency of the above writ petitions and award passed in Reference Case no. 21 of 1990 on 15th May, 1992 there was a delay in publication of the result of the written test and interview held by Allahabad Bank in the year 1993 to fill up the post of subordinate cadre. It further appears, first the bank was to absorb those workmen who are on DRPS roll of United Industrial Bank and who had completed 240 days service in a year on or before 31-10-1989. Then after, on completion of absorption of those qualified DRPS of United Industrial Bank, only then Allahabad Bank could give recruitment to those candidates qualified in the interview held in 1993 and the result of which was declared in the year 1998.

Further, letter dated 20-01-1999 issued by the Govt. of India, Ministry of Finance, Department Economic Affairs (Banking Division) addressed to the Chief Executives of Public Sector Banks with regard to maintenance of wait list. The Govt. of India, Ministry of Finance has mentioned that wait list should remain valid for a period of one year from the date of its preparation or till the finalisation of next round of recruitment/promotion as the case may be whichever is earlier. Nothing has come on record that Allahabad Bank held a fresh recruitment after declaration of result in the year 1998 of the recruitment process that took place in 1993 and which prove that it could not complete the absorption of those qualified workmen amongst 592 DPRS on roll of erstwhile United Industrial Bank.

Therefore, in view of Govt. of India letter dated 20-01-1999, the merit list published by the Allahabad Bank could remain valid only for a period of one year. Further, in view of the direction by the Hon'ble High Court in Writ Petition No.879 of 1994 and C.R. No.9139 (W) of 1993 dated 17-11-1994, the management of Allahabad bank was under obligation to absorb amongst 592 DRPS on rolls of erstwhile United Commercial Bank which has amalgamated with Allahabad Bank w.e.f. 31st October, 1989 and who have completed 240 days in a year prior to 31st October, 1989 and whose names appeared in the list in the reference case no.21 of 1990 and after absorption all those eligible

workmen on DRPS rolls of erstwhile United Commercial Bank it could recruit those candidates qualified in the interview of 1993 and result declared in 1998 provided there exists vacancy for the post.

Further it is admitted fact the name of the alleged workman appears in Sl. No.171 of the merit list of 1998. Now, it is settled law that validity of a panel of selected candidates is only for one year and after that period the panel expires. Since there is no one from the side of the management to assist this Tribunal what was the actual fate of the result declared by it in the year 1998 against the interview held in 1993 after the verdict of the Hon'ble High Court passed in Writ Petition No.879 of 1994 and C.R. No.9139 (W) of 1993 dated 17-11-1994 and whereby the award dated 15-05-1992 passed in Reference Case no.20 of 1990 was affirmed. Therefore, from the materials that are available in the record it appears to this Tribunal, Allahabad Bank could not absorb the alleged workman though qualified in the selection process as first the bank was to comply the direction given by the Hon'ble High Court in the above mentioned writ petitions and also the award passed in Reference Case No.21 of 1990 and was under obligation to absorb those eligible workmen amongst the 592 on DRPS roll of United Commercial Bank and if any vacancy remains then it was to recruit from the panel of qualified candidates as per the merit list declared by it in the year 1998. Further, in view of the Govt. of India letter dated 20-01-1999 the panel of selected candidates was to remain valid only for one year.

In view of the above facts it appears the panel in which the name of workman appears against the Sl. No.171 was valid only for a year i.e. till 1999 and after 1999 the panel lapsed. On the lapse of such panel after one year and the workman cannot claim appointment on the basis of lapsed panel. Therefore, no relief can be granted to him. It is very interesting to note that alleged workman nowhere alleged that except him the other candidates whose names appear in the merit list were absorbed or given appointment by the management of Allahabad Bank. The workman in his evidence admitted that he does not know whether any person whose name appears in the merit list and below him being given job by the management of Allahabad Bank. Such facts also prove the bank could not give appointment to all the qualified candidates whose names appear in the merit list of 1998 and the list which was also valid only for a period of one year.

Therefore, this Tribunal does not find any illegality in not offering regular employment as a Peon cum Farrash to the alleged workman by the management of the Allahabad Bank on the basis of the result declared by the bank on 22-06-1998.

Further, the paragraph 1 of the claim statement itself proves the alleged workman never worked for more than 240 days in a calendar year as a daily rated casual worker in the concerned bank and as such he is not entitled to get the benefit of section 25-F of the I.D. Act. He being engaged on 'no work no pay' basis sporadically by the bank and question of his termination/retrenchment by the bank too does not arise.

In view of the above, the Reference No. 06 of 2006 is dismissed and an award to that effect is passed accordingly.

JUSTICE K. D. BHUTIA, Presiding Officer.

नई दिल्ली, 23 नवम्बर, 2023

का.आ. 1855.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान शिपयार्ड लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट आद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदाबाद के पंचाट (23/2015) प्रकाशित करती है।

[सं. एल 34011/01/2014-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 23rd November, 2023

S.O. 1855.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.23/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the industrial dispute between the management of Hindistan Shipyard Ltd. and their workmen.

[No. L-34011/01/2014- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 3rd day of October, 2023

INDUSTRIAL DISPUTE No. 23/2015

Between:

The General Secretary,

Hindustan Shipyard Staff & Workers Union,

Gandhigram,

Visakhapatnam – 530 005. ..….Petitioner

AND

The Chairman & Managing Director,

Hindustan Shipyard Ltd.,

Gandhigram,

Visakhapatnam – 530 005. … Respondent

Appearances:

For the Petitioner : Representative

For the Respondent : None

AWARD

The Government of India, Ministry of Labour by its order No.L-34011/ 01/2014-IR(B.II) dated 19.2.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Hindustan Shipyard Ltd., and their workmen. The reference is,

SCHEDULE

"Whether the action of the Management of Hindustan Shipyard Ltd., Visakhapatnam in not fulfilling the following demands, raised by the Hindustan Shipyard Staff & Workers Union, Visakhapatnam (Affiliated to INTUC) is legal and justified? What relief the concerned union is entitled?"

The reference is numbered in this Tribunal as I.D. No. 23/2015 and notices were issued to the parties concerned and Petitioner union filed claim statement.

2. Respondent set ex-parte as no counter filed after giving several opportunities.

3. After filing claim statement Petitioner Union did not file vakalath and despite sufficient number of opportunities have been provided to Petitioner Union, none present for Petitioner union to adduce evidence in support of their claim. Record reveals that representative of Petitioner union is absent since 20.1.2017. Respondent is already set ex-parte on 10.8.2023 and the case is posted for ex-parte evidence of Petitioner Union. The claim of Petitioner is not substantiated by any evidence. Therefore, a 'no-claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of October, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Witnesses examined for the

Petitioner	Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 नवम्बर, 2023

का.आ. 1856.—आद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उतर रेलवे के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (44/2017) प्रकाशित करती है।

[सं. एल-12025/01/2023-आई आर (बी-I)-93]

सलोनी, उप निदेशक

New Delhi, the 24th November, 2023

S.O. 1856.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.44/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen.

[No. L-12025/01/2023-IR(B-I)-93]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No 44/2017

BETWEEN

Suresh Rawat son of Sri Sundar Lal through Sri Parvej Alam, 283/63 Kha, Garhi Kanuar, (Premvati Nagar) Post-Manak Nagar, Lucknow (U.P.)- 226011

Claimant/Employee

AND

1. The Assistant Engineer, Mandal Sanket & Doorsanchar,
   Uttar Railway, DRM Office.
   Hazratganj, Lucknow

2. The Engineer, Mandal Sanket & Doorsanchar,
   Uttar Railway, DRM Office,
   Hazratganj, Lucknow

Opposite Party/employer

AWARD

Facts of the case:

Sri Suresh Rawat /claimant filed claim petition filed claim petition dated 7.11.2017 before this Tribunal on 20.11.2017 under Section 2-A of the Act on the following facts.

Claimant was initially appointed on the post of Signal Khalasi under Sultanpur A.M.S./ North Railway/Harpalganj under opposite party No. 2 however, services was disengaged/terminated on 06.07.2005.

Accordingly the following relief has been prayed:-

निवेदन

श्रीमान जी से निवेदन है कि कर्मकार को अवैध सेवा समाप्ति की तिथि दिनांक 06.07.2005 से वेतन आदि सभी सहित री–ईन्स्टेट करने हेतु आदेश करने की कृपा करें। महान कृपा होगी।

On behalf of respondent written statement was filed on 31.07.2018. and preliminary objection taken by them in paragraph 5 that the present claim petition filed after lapse of 11 years from the date of termination/retrenchment, so the same is not liable to be dismissed as per Section 2-A of the Industrial Dispute Act.

I have heard Sri Parvej Alam learned counsel for the claimant none appeared on behalf of respondent and gone through record.

In order to decide the preliminary objection taken by respondent it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947.

In brief the same that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery.

The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner

could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and position of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has

been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

In view the above said facts as well as that the workman/Sri Suresh Rawat approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 06.07.2005 filed the present case on 20.11.2017 u/s 2A (2) of the Act before this Tribunal as such, the claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly claim petition is rejected on the ground that it is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

LUCKNOW. JUSTICE ANIL KUMAR, Presiding Officer

20.09.2023

नई दिल्ली, 24 नवम्बर, 2023

का.आ. 1857.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई आर सी ओ एन के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (08/2018) प्रकाशित करती है।

[सं. एल -12025/01/2023-आई आर (बी-I)-92]

सलोनी, उप निदेशक

New Delhi, the 24th November, 2023

S.O. 1857.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.08/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of IRCON and their workmen.

[No. L-12025/01/2023-IR(B-I)-92]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No 08/2018

BETWEEN

Rajnath Yadav aged about 53 years son of Sri Ramadhin Yadav resident of near NTPC colony gate No. 4 post Shakti Nagar Sonebhadra U.P.

Claimant/Employee

AND

3. Managing Director Indian Railway construction

Company Limited (IRCON) Government of India undertaking having its Corporate Office At District Saket New Delhi.

4. General Manager/H.R. Indian Railway Construction Company Limited a Government of India undertaking having its corporate office at Saket New Delhi.

Opposite Party/employer

AWARD

Facts of the case:

Sri Rajnath Yadav/claimant filed claim petition dated 07.04.2018 before this Tribunal on 18.04.2018 ,facts in brief and relief claimed by claimant are as under:-

Sri Rajnath Yadav/ claimant was engaged as a site supervisor in April 1982 in the grade of Rs. 260-400/- with the respondent.

After completing the training applicant was promoted on scale of pay grade on the scale of grade of Rs. 260-400/- per month with effect from 20.01.1984 by an order dated 01.01.1986.

However in most legal arbitrary manner the joint General Manager IRCON International Limited Anapara District Sonebhadra U.P. dispensed with the services of appellant on 31.05.1998 on the grounds that the project on which appellant was working was closed.

In view of the said facts the claimant prays for the following relief:-

(a) That the opposite party may be directed to take the applicant in service and engaged him on the post as he was hold i.e. on the post of supervisor with full back wages from the said order and opposite parties may be directed to permit the applicant to assign the work on the post of supervisor.

(b) The opposite parties be further directed to regularize the services of the applicant on the post in question held by him and to pay the provident fund and group insurance etc as early as possible.

(c) That the cost of this claim petition be awarded to the complainant against the opposite parties.

(d) That any other relief or reliefs which this Hon'ble Court may deem fit just and proper in the circumstances of the case be also awarded to the claimant against the opposite party.

On behalf of the respondent written statement was filed in which preliminary objection was taken that the claim petition filed by appellant is liable to be dismissed on the ground of limitation and in this regard in para 17 of statement of defense it has been stated that the claim of the workman is highly time barred being preferred after a lapse of approximately 20 years in view of Section 2-A(3) of the Industrial Dispute Act, 1947, which reads as under:-

> *"2A. Dismissal etc. of an individual workman to be deemed to be an industrial dispute.*
>
> *(1)*
>
> *(2)*
>
> *(3) The application referred to in sub-section (2) shall be made to the labour court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub section (1)".*

I have heard the learned counsel for the claimant Miss. Chandrama Chandra holding brief of Mrs. Manju Sharma counsel for claimant and Sri Gurban Akhtar Khan for respondent.

After hearing them the core question is to be considered that "whether the claim petition filed by claimant under Section 2-A is barred period of limitation or not". As per the preliminary objection taken by respondent.

In order to decide the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947.

In brief the same that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

> "*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*
>
> Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

> *"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -*
>
> *"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*
>
> *(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*
>
> *(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."*

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the

Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and position of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

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"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

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> *"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

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> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*
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> *(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)*

In view the above said facts as well as that the workman/Sri Rajnath Yadav approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 31.05.1998 filed the present case on 18.04.2018 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground it is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

LUCKNOW. JUSTICE ANIL KUMAR, Presiding Officer

20.09.2023

नई दिल्ली, 28 नवम्बर, 2023

का.आ. 1858.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केंद्रीय सांख्यिकी कार्यालय, कोलकाता महानिदेशक, केंद्रीय सांख्यिकी कार्यालय, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री मोहम्मद जाबिर हुसैन, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या CGIT.02 OF 2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.09.2023 को प्राप्त हुआ था।

[सं. एल -42025-07-2023-182-आईआर(डीयू)]

डी.के. हिमांशु,अवर सचिव

New Delhi, the 28th November, 2023

S.O. 1858.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. CGIT.02 OF 2013) of the Central Government Industrial Tribunal cum Labour Court – Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to Central Statistics Office, kolkata The Director General, Central Statistics Office, and Shri Md. Jabir Hossain ,Worker, which was received along with soft copy of the award by the Central Government on 14.09.2023.

[No. L-42025-07-2023-182- IR(DU)]

D.K.HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.
Application No. CGIT. 02 OF 2013 [U/S 2A(2) of I.D. Act.]

Md. Jabir Hossain

...Applicant

-Vs-

1. Central Statistics Office.

2. Director General, Central Statistics Office.

...Opp. Parties

Appearance :

On behalf of Workman : Applicant
On behalf of the Management : Mr. Joy Sarkar, Adv.

Dated 6th March, 2023

AWARD

Record is put up today for passing necessary order on the issue 'Whether the office of Central Statistics office is an industry'?

Md. Jabir Hossain has filed the present case U/s 2A of the Industrial Dispute Act, 1947 in the year 2013, challenging termination of his service by the Authority of the Central Statistics Office, Kolkata on 01.10.2012.

1t is his case his name being sponsored by the Regional Employment Exchange, he has engaged / appointed to work as a mazdoor in the Central Statistics Office on 01.06.1999. He diligently discharged the job lf a peon in the establishment of employer till his service was terminated on 01.10.2012 without following the statutory procedure. Thus he has prayed for reinstatement with full back wages.

The alleged employer contested such claim of the alleged workman by filing written statement and where it has categorically challenged the maintainability of the same before the Tribunal on the ground the establishment is a regular Central Govt. office discharging its severing duty and not on industry.

The concerned workman was appointed as a mazdoor (unskilled labour) purely for doing occasional nature of work on daily basis. Payment was made to him on the basis of claim voucher submitted by the Mazdoor. He not being a permanent staff, question of reinstatement with back wages does not arise. Therefore, it has prayed for dismissal of the claim application of the applicant.

The record shows the so called workman has examined himself as a witness No. 1 and has been cross-examined by the opposite party / alleged employer.

That as many as (10) ten documents have been marked as exhibits after formal proof being dispensed with.

While the opposite party has declined to adduce any evidence.

Therefore, let me first decide whether Central Statistics Office is an Industry as defined in Sec 2(j) of the I.D. Act ?

It is true that there is an amendment in the definition of "Industry" by the Act 46 of 1982, but till date amended definition of Industry has not been notified or given effect by the Govt. Thus unamended definition of Industry prevail and which read as "Industry" mean any business, trade, undertaking, manufacturing calling of employee and includes any calling service, employment, handicraft or industrial occupation or avocation of workman.

However, the courts / tribunal while interpreting the term "Industry" has held that profit motive or money consideration for the service rendered is not essential character. The regal and severing functions of the State are kept outside the scope of the definition, but other functions of the Govt. which are not of a regal character held to be an Industry.

In the present case the establishment of the Govt. is a Central Statistics office of Calcutta. So, let me see what is the core function of the Statistical office.

The term "Statistics" can notes science of collecting analysing, presenting, organising data and interpreting data. The data collected can be used to predict the future, determine the probability and make decision based on data.

As per the website of Central Statistical office it is responsible for co-ordination of statistical activities in the country and evolving and maintaining statistical standards. It activities include National Income, Accounting conduct of annual survey of industries, Economic creases and its follow up surveys, compilation of index Industrial Production, as well as Consumer Price Index for Urban Non-Manual Employee, Human Development Statistics, Gender Statistics importing in official statistics. Five year plane work relating to Development of statistics in the States of Union Territories dissemination of statistical information work relating to trade, energy, construction and environment statistics revision of National Industrial classification etc.

Therefore, prima facie it is seen that control statistics office discharge the function like that of a Research Institute in collection of data, which not only help the government in planning National Development work in different fields. It provides quantative and qualitative information on all major area of citizens lives such as economic and social development, living conditions, health, education and the environment. It supplies decision Maker and other user including the general public and the research community with a continuing flow of information to help user develop their knowledge about a particular topic or geographical area, make comparison between countries or understand change over time official statistics make information on economic and social development accessible to the public allowing the impact of government policies to be assessed, thus improving accountability. To provide basic information for decision making evaluation and assessment at different level and to keep users well informed and assist good policy and decision making. It collects data from different Govt. organizations, non-govt. organizations and agency and also from international organizations & agency.

Therefore, the activity and function of the Central Statistical office, Kolkata not be called business, trade, undertaking, manufacturer or industrial occupation or economic venture or commercial enterprise to satisfy the need of the consumer community. The data collected by it is a public property. Therefore, whatever datas collected by it can not be said that by co-operation in between it and its employees it collected the same.

It is true in Bangalore water supply and sewerage Board Vs. A Rajappa & others, the Hon'ble Supreme Court has held even department of the government discharging sovereign function will be an industry provided there is any unit where systematic activity is carried on by co-operation between an employer and his employee for production or distribution or supply of goods or service with a view to satisfy human wants or wishes.

But, from the discussion made above it becomes clear the activity of the Central Statistics Office is sovereign function of the government which is specifically excluded from the definition of the term "Industry".

Consequently, the Applicant can not be said to be a workman as defined in see 2(A) of the Act and no Industrial dispute can be said to have arisen.

Further, the Applicant by filing the present case has prayed for his reinstatement with back wages.

The Ext. W-2 & W-3 show that Applicant was appointed to do misc. type of manual labour such as fetching of water from outside the building and distribution of water to different units and to move heavy weight machine & furniture etc. at CSO (I.S. Wing) w.e.f. 01.06.1999. Ext. W-5 & Ext. W-6 shows that his service was taken for few days in a month and paid on the basis of no work no pay. Ext. W-4 shows that he had applied for the post of peon on contractual basis on 17.02.2003, but Ext. 5 & Ext. 6 shows that he used to work as a mazdoor / safaiwala in the year 2008-2009 and paid wages for such job from where it can be informed that he did not qualify for the post of peon on contractual basis.

More so, he in his evidence in cross has stated that he is only class IV pass. In a Govt. establishment the minimum qualification for the post of peon was class VIII pass and now class X pass. The Applicant having no minimum educational qualification for the post of a peon can not claim absorption in regular post of peon even if he might have rendered service for more than ten years in intermittent manner. Reinstatement in service of daily rated worker, whose appointment is temporary on no work no pay basis and even if his termination was in violation of the provisions of the I.D. Act, he will not be entitled to grant of permanent status by way of reinstatement.

I find the Applicant a casual mazdoor has filed this case to get himself an employment through the order of the tribunal for a permanent post for which he has no minimum educational qualification by way of reinstatement with back wages.

Accordingly, the application U/s. 2A of the I.D. Act, 1947 is hereby dismissed and the Applicant is not entitled to any relief.

Award is passed to that effect.

JUSTICE K.D. BHUTIA, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2023

का.आ. 1859.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण बिहार ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट (17 (C) of 2019) प्रकाशित करती है।

[सं. एल-L-12011/36/2019-IR(B.I)]

सलोनी, उप निदेशक

New Delhi, the 29th November, 2023

S.O. 1859.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 17 (C) of 2019) of the Indus.Tribunal-cum-Labour Court Patna as shown in the Annexure, in the industrial dispute between the management of Dakshin Bihar Gramin Bank and their workmen.

[F. No. L-12011/36/2019- IR(B.I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA.

Reference Case No.:- 17 (C) of 2019

Between the management of (1) Chairman, Dakshin Bihar Gramin Bank, Head Office, Sri Vishnu Commercial Complex Ashokchak, New Bypass Road, N.H. 30, Patna (Bihar)-800016 (2) Chief Manager, Dakshin Bihar Gramin Bank, Biharsharif, Dist.- Nalanda (Bihar)-803101 and their workman Sri Ranjan Kumar, Office Assistant represented through the President, Bihar Provincial Gramin Bank Employees Association, 2nd Floor, Saboo Complex, P.O- Hotel Republic Exhibition Road, Patna (Bihar)- 800001.

For the management:-	Sri Santosh Kharan Thakur, Assistant Manager, Legal no.-(1) & (ii) Cell at Head Office, Patna
For the workman:-	Sri B. Prasad, President, Bihar Provincial Gramin Bank Employees Association.
Present:-	Manoj Shankar Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, dated- 7th November, 2023

By the adjudication order no.- L-12011/36/2019-IR (B-I) New Delhi, dated- 30.10.2019 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of

the Industrial Dispute Act, 1947, (hereinafter to be referred to as "the Act"), the following dispute between (1) Chairman, Dakshin Bihar Gramin Bank, Head Office, Sri Vishnu Commercial Complex Ashokchak, New Bypass Road, N.H. 30, Patna (Bihar)-800016 (2) Chief Manager, Dakshin Bihar Gramin Bank, Biharsharif, Dist.- Nalanda (Bihar)-803101 and their workman Sri Ranjan Kumar, Office Assistant represented through the President, Bihar Provincial Gramin Bank Employees Association, 2nd Floor, Saboo Complex, P.O- Hotel Republic Exhibition Road, Patna (Bihar)- 800001 for adjudication to this tribunal:-

SCHEDULE

"Whether the action of the management of Dakshin Bihar Garmin Bank, Bihar Sharif, in not allowing Shri Ranjan Kumar, Office Assistant to engage Defence Assistant / Representative of his choice, is just and proper?If not, to what relief the workman concerned is entitled to?

2. After receipt of the reference / notification, notice was issued to the parties concerned. Both parties appeared before this tribunal but the workman did not file any statement of claim.

3. From perusal of the case records, it shows that after issuance of notice, both parties appeared before this tribunal on 10.12.2019 but workman did not file any statement of claim even after availing several opportunities. On 10.12.2019 and 09.01.2020 representative of the workman Mr. B. Prasad appeared and prayed for time. On 26.02.2020 workman is absent and no one appeared on behalf of the workman side. On 16.04.2020, 18.05.2020, 18.06.2020, 16.07.2020, 18.08.2020 and 16.09.2020. Notice was issued again to the workman vide memo no.- 160 dt- 20.12.2021. On 18.01.2022 and 14.02.2022 representative of the workman appeared and orally prayed for time as workman is out of station. On 28.03.2022, 21.04.2022, 26.05.2022 workman was remained absent. On 26.05.2022 Representative of the workman filed a petition mentioning their in workman himself never turned up before this tribunal since 10.12.2019 to till date. However representative of the workman / union had assured to this tribunal for filing his statement of claim but did not file any statement of claim, that shows workman is not interested in his our case. So no dispute award may kindly be passed but on that date representative of the workman again submitted one last chance may be given to communicate to the workman. On 12.07.2022 both parties appeared and representative of the workman / union appeared before this tribunal and orally submitted that workman has lost his interest in this case so no dispute award may kindly be passed. Records itself shows that several opportunities were given by this tribunal but the workman never turned-up. Hence, this tribunal finds and hold that continuous absence of workman, itself shows that now workman has no interest in the instant dispute, perhaps he has no grievance at all now.

4. In view of the above aforesaid discussion this is a considered opinion of this tribunal, since workman has no dispute, hence this tribunal has no alternative but to pass "No Dispute Award" in this case. Thus this tribunal pass

"No Dispute Award" accordingly. This award is effected after date of publication in gazette.

This is my award accordingly.

Dictated &Corrected by me.

Sd/- 07.11.2023 Sd/- 07.11.2023

(Manoj Shankar) (Manoj Shankar)

Presiding Officer, Presiding Officer,

Industrial Tribunal, Patna. Industrial Tribunal, Patna.

नई दिल्ली, 29 नवम्बर, 2023

का.आ. 1860.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **इंडियन** बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय आसनसोल के पंचाट (**31/2019**) प्रकाशित करती है।

[सं. एल-L-12011/32/2019-IR(B.II)]

सलोनी, उप निदेशक

New Delhi, the 29th November, 2023

S.O. 1860.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 31/2019) of the Cent. Govt. Indus.Tribunal-cum-Labour Court Asansol as shown in the Annexure, in the industrial dispute between the management of Inidan Bank and their workmen.

[No. L-12011/32/2019- IR(B.II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,

Presiding Officer,

C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 31 OF 2019

PARTIES: Indian Bank Employees Union

Vs.

Management of Indian Bank

REPRESENTATIVES:

For the Union/Workmen: Tapas Das, General Secretary, Indian Bank Employees Union.

For the Management: Mr. P. K. Das, Adv.

INDUSTRY: Banking.

STATE: West Bengal.

Dated: 08.09.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order**No. L-12011/32/2019-IR(B-II)** dated 30.08.2019has been pleased to refer the following dispute between the employer, that is the Management of Indian Bank, Zonal Office, Bardhaman and their workmen for adjudication by this Tribunal.

SCHEDULE

"*Whether the claim of the Union that action of Management of Indian Bank by issuing tender notice on 25.07.2018 for outsourcing the job of cleaning, housekeeping and maintenance service at office building and branches of Indian Bank instead of regularizing full time / part time sweeper engaged by the bank for the purpose is fair, legal and justified? If yes, what relief the workmen are entitled to?****"***

1. On receiving Order**No. L-12011/32/2019-IR(B-II)** dated 30.08.2019 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 31 of 2019**was registered on 18.09.2019and an order was passed issuing notice to the parties under registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. P. K. Das, learned advocate for the management of Indian Bank is present. The case is fixed up today for ex-parte hearing against the Bank as no written statement is submitted after granting several opportunities. On 24.12.2019, the General Secretary of Indian Bank Employees Union, Kolkata filed written statement. On repeated calls at 12:50 PM none appeared for Indian Bank Employees Union, Kolkata.

3. Since there is no representation of the union and no step has been taken on the date of ex-parte hearing, I find no reason to proceed with this case. Mr. P. K. Das, learned advocate submits that he has no instruction from the Bank for proceeding. In view of facts and circumstances and non-participation of the union, the Industrial Dispute referred hereinabove is dismissed in the form of a **No Dispute Award**.

Hence,

ORDERED

that a **No Dispute Award** be drawn up in respect of the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2023

का.आ. 1861.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट (10 (C) of 2016) प्रकाशित करती है।

[सं. एल-L-12011/100/2015- IR(B.II)]

सलोनी, उप निदेशक

New Delhi, the 29th November, 2023

S.O. 1861.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 10 (C) of 2016) of the Indus.Tribunal-cum-Labour Court Patna as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/100/2015- IR(B.II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA.

Reference Case No.:- 10 (C) of 2016

Between the management of Zonal Manager, UCO Bank Zonal Office, Mouryalok, Block-A Patna (Bihar) and their workman Sri Sanjay Kumar represented through the State Secretary, UCO Bank Employee's Association, Saboo Complex, Behind Hotel Republic, Exhibition Road, Patna, Bihar-800001..

For the management:-	Sri Praveen Kumar, Advocate.
For the workman:-	Sri B. Prasad, State Secretary, UCO Bank Employee's Association.
Present:-	**Manoj Shankar** **Presiding Officer,** **Industrial Tribunal, Patna.**

AWARD

Patna, dt- 17th October, 2023.

By the adjudication order no.- L-12011/100/2015-IR(B-II) New Delhi, dated- 28.02.2016 the Govt. of India Ministry of Labour New Delhi has referred under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as " the Act") the following dispute between the management of Zonal Manager, UCO Bank Zonal Office, Mouryalok, Block-A Patna (Bihar) and their workman Sri Sanjay Kumar represented through the State Secretary, UCO Bank Employee's Association, Saboo Complex, Behind Hotel Republic, Exhibition Road, Patna, Bihar-800001for adjudication to this tribunal.

SCHEDULE

" Whether the workman Sri Sanjay Kumar who worked as temporary sweeper on daily wages for more than 02 years in the Nawagarhi branch of UCO Bank is entitled to be reinstated and regularized as full time sweeper? If not, what relief he is entitled to?"

2. Briefly stated the claim of workman Sanjay Kumar is that UCO bank opened a branch at Nawagarhi, Dist.- Munger on 08.07.2013 and Sanjay Kumar(Workman) resident of vill.- &).O- Kalyanpur, P.S- Bariarpur, Dist.- Munger was orally appointed to discharge the duties of a part time sweeper from the date of opening of the branch. It is further asserted that after the appointment the workman used to discharge duties of cleaning sweeping of the bank premises and besides this he used to open the bank gate and posting of mail whenever required, stitching of currency notes / vouchers, whenever required. It is further asserted that the workman used to discharge his duties from 9.00A.M to 5.00P.M regularly as per the instruction of the Branch Manager. Initially he has been paid Rs 100/- per day and it was enhanced to Rs.125/- when his services has been terminated on 14.07.2015. It is further asserted that prior to termination of his duties by the bank, the workman caused an Industrial Dispute raised by his sponsoring union as per the Industrial Dispute Act, 1947. On behalf of the workman a complaint petition was filed

before the conciliation officer dt- 13.08.2015 for taking necessary steps but management appointed some fresh hands, ignoring the claim of the workman covered u/s- 2(00) of the Industrial Dispute Act, 1947 and also management violated the mandatory provisions of the section 25 F of the Industrial Dispute Act. It is further asserted that the workman worked with full devotion in Nawagarhi Branch and he did not commit any misconduct so workman is entitled to be reinstated and regularized in the services of the bank as a Part Time Sweeper under 1/3rd scale wages of a full time sub-staff. The workman made prior of following reliefs:-

(i) Reinstatement in service of UCO Bank as a Part Time Sweeper under 1/3rdpay scaleof a full time subordinate staff;

(ii) Payment of full back wages;

(iii) Regularization of services as a Part – Time Sweeper;

(iv) Payment of a sum of Rs. 10,000/- for contesting the dispute;

(v) Any other relief (s) the Hon'ble Tribunal deems fit and proper;

3. On the other hand the management of UCO Bank filed written statement mentioning therein his State Secretary of UCO Bank Employees Association had filed an application u/s 2A (1) & (2) of the Industrial Dispute Act on behalf of the workman Sri Sanjay Kumar making complaint regarding termination of service by the management earlier by way of institution of I.D.Case No.- 13(C)of 2015in which application was filed on behalf of the management bank for dropping the said I.D Case in view of the order dt-22.11.2017 passed by the Hon'ble Court in CWJC No.- 2053 of 2016 thereafter workman filed an application on 18.04.2018 for withdrawing the dispute in the said I.D.Case. It is also asserted that dispute was admittedly raised before the Assistant Labour Commissioner (C) at Pakur, and conciliation took place in Jharkhand therefore reference to the application in the State of Bihar amounts to jurisdiction of error. It is further asserted that this tribunal is not notified as Central Government Industrial Tribunal for all purposes so no case can be filed or entertained by this tribunal belonging to Central Government unless it is notified as CGIT u/s 2A of the Act. It is further asserted that two relief for termination and regularization can not be claimed under one application. It is further asserted that workman Sanjay Kumar was engaged only for the purpose of cleaning of the premises occasionally and on as and when required basis when his services took by the Nawagarih Branch for the cleaning for the premises. He worked only for 1-2 hours as a casual labourer. It is further asserted that the engagement of Sanjay Kumar was dully need based engagement and his services was absolutely not against vacant sanctioned post of sweeper. Moreover, there is no provision for oral appointment and the branch manager has no power to appoint any one on oral basis. It is further asserted that the name of Sanjay Kumar was not sponsored by the employment exchange. It is further asserted that Sanjay Kumar the workman was working in absence of the regular part time sweeper on purely need based as when required. It is further asserted that branch manager used to withdraw and pay to the persons concern from whom the work is taken from time to time as and when required. The branch manager makes payment against the work taken from the head meant for cleaning and sweeping for the branch. Therefore, there was no relationship of master and servant between the bank. It is further asserted that under law the duty is cast upon the workman to prove that he has worked for 240 days before the termination in twelve calendar months preceding the date of termination. It is further asserted that the alleged workman presented himself before the opening of the bank and if there is need for cleaning of the branch, he was called to clean the premises as casual mazdoor the worked after only for few hours so there is no violation of section-25F of the I.D.Act. It is further asserted that the claim of the workman is totally misconceived. The claim for workman under this reference case is not maintainable. So entire petition and prayer of the workman is misconceived in law that is fit to be rejected. It is further asserted that the claim of the workman is in correct regarding he was appointed as par time sweeper on oral basis and he never worked from 9.00 A.M to 5.30 P.M there is no documentary evidence annexed by the workman with his claim that would substantiate regarding working hours. It is further asserted that the workman never worked regularly in the absence of any entry of the attendance register. It is further asserted that management bank has not violated any provision of law and not resorted to unfair labour practice. Accordingly action of the management is not regularizing the workman is legal and justified and the prayer therein fit is to be rejected.

4. Having considered rival contention as per statement of claim as filed by the workman and written statement filed by the management bank, the points for determination of this dispute is:-

(i) " Whether the workman Sri Sanjay Kumar has discharged his duties at Nagagarhi branch of UCO Bank Dist.- Munger on regular basis from 08.07.2013 to 13.07.2015.

(ii) " Whether the workman is entitled to be reinstated and regularised as full time sweeper in UCO Bank.

(iii) " What other relief is entitled to the workman.

FINDINGS

5. In order to satisfy his claim the workman Sanjay Kumar produced himself as W.W-1 and besides oral evidence. Workman got some documents Extd as:-

(i) Ext.- W- the forwarding letter dt- 02.08.2014 of Branch Manager, Nawagarhi to the Zonal Office, Patna regarding the details of casual sweeper working in Nawagrahi Branch.

(ii) Ext.- W/1- The details the form of sweeper working in Nawagarhi sent to the Zonal Office, Patna.

6. On the other hand management bank also examined two witness who are namely M.W-1 Sujata Kumar and M.W-2 Poonam Kumar the Assistant Manager of Nawagarhi branch.

6. First of all this tribunal securitizes the evidence of workman W.W-1 Sanjay Kumar who deposed before this tribunal on 26.03.2019. He has stated in his examination-in-chief is that he was working in Nawagarhi of UCO Bank on the post of peon cum sweeper where he used to discharged his duties by opening the lock of the branch and cleaning the bank premises, wash room and table, chair of the bank. He also used to placed files on the counter of the staff and he brought the case box from the strong room to the counter of the cashier. This witness further stated that he also used to serve drinking water, and tea etc to the staffs. This witness further stated that he discharged the duties of stitching vouchers and making bundle of the currency notes and also performed the postal work of the bank. This witness further stated that he used to discharge the duties on nawagarhi branch from 9.00 A.M to 5.00 P.M and he working in the said branch regularly from 08.07.2013 to 14.07.2015. This witness further stated that initially he got Rs. 100/- per day as wages letter of it is enhanced Rs. 125/- per day. This witness also stated that he used to get wage payment weekly through voucher. This witness also stated that no other peon or sweeper was posted in the bank during his engagement in the said branch. This witness also stated that he used to discharge his duties like of permanent peon and sweeper. This witness further stated that when he raised his dispute before the ALC (C) for regularization of his service then bank terminated his duties upon getting notice from the ALC (C), Patna. This witness also stated that he did not get notice, notice pay or compensation of the bank management. He further proved that the Branch Manager has sent the details of his working to the Zonal Office with the forwarding letter i.e- marked Ext.-W & W/1. This witness also stated that after terminating him bank has engaged some other person in post of peon or sweeper.

In cross-examination this witness categorically stated in para-9 he did not received appointment letter from the bank. He further stated that in the said para is that a notice was displayed for the engagement of peon cum sweeper on the notice board and thereafter he filed an application in the said branch however, he does not have copy of the said petition. This witness also admitted in para-9 of the cross-examination he used to Assist to the Branch Manager for taking the cash out from the cash room and further admitted that he used to discharge his duty on each working day of the bank. This witness further admitted in cross-examination is that the first Branch Manager of Nawagarhi Branch was Women and second Branch Manager was Sri Vijay Kaisari. This witness further admitted that in cross-examination that on his oral request his daily wages was enhanced from Rs. 100/- per day to Rs. 125/- and manager sahab orally terminated his engagement but no notice was given earlier. This witness also admits that he got all the payment of his working in the bank and he further denied that his claim is not justified.

7. Now this tribunal securitizes the evidence of management side. M.W-1 Sujata Kumari who deposed before this tribunal on 25.04.2019 who stated before this tribunal that she was posted at Nawagarhi branch from 08.07.2013 to 18.11.2013 and Sanjay Kumar was doing the work of sweeper accordingly to need of the bank. She further stated that besides Sanjay Kumar, others also do the work of cleaning of the branch. She further stated that she does not remember Sanjay Kumar was working in the branch continuously for 1 to 2 months.

In cross-examination this is categorically admitted that in para-2 that then Nawagarhi branch was on 05.07.2013 at that time there was no regular sweeper posted in the branch and till she remained working as manager in the said branch from 05.07.2013 to 18.11.2013 there was no regular cleaning staff in the branch. This witness further admits in para-3 Sanjay Kumar was given Rs. 100/- per day and his payment was on weekly basis through voucher. She further admits in para-3 of the cross examination that she did not prepare any panel list of cleaning staff. In para-4 of the cross-examination this witness categorically stated that she has no knowledge the name of the nomenclature of the PTS is changed as house keeper cum peon. She also admitted that in para-4 of the cross-examination there was no permanent sweeper or peon of the Nawagarhi branch during her tenrue. In para-5 of the cross-examination this witness categorically stated that Sanjay Kumar was doing cleaning work of the bank premises he was never discharged of peon work, some time one Gaurav Kumar the local boy discharged the duties of peon as and when required by the branch and she further denied that her evidence is not true.

8. M.W-2 Poonam Kumari who deposed before this tribunal on 27.06..2019 she categorically stated before this tribunal that she knows the workman Sanjay Kumar. She further stated that she was posted at Nawagarhi branch Dist.-Munger in February 2014 as Assistant Manager and that time B.K Keshri was branch manager. This witness further stated that B.K. Keshri has been transferred from the said branch on 01.07.2014 then she was incharge Manager of the said branch and she remained as a in charge manager till December 2016. She further stated that Sanjay Kumar was engaged for the cleaning of the bank premises and for the work of photo stat as per need of the branch. She further stated that Sanjay Kumar discharged his duties 3-4 hours and when a permanent staff was appointed in the bank. She did not call Sanjay Kumar to take his service in the branch. She further stated that one

permanent class-IV staff was posted in the branch from July-2015. She further stated that she also took the service of the others for cleaning work.

In cross-examination she stated in para-5 is that she came to know Sanjay Kumar was the resident of Kalyanpur but she does not know the distance between Nawagrahi to Kalyanpur. In para-6 of the cross-examination this witness categorically admitted that she did not prepare the list of temporary worker who discharged their duties in the bank. She further stated that one Gaurav Kumar and Deepak and others also gave their service to the bank like Sanjay Kumar but they did not file any case against the management bank for their regularization of service. In para-7 of the cross-examination this witness admitted that Sanjay Kumar used to get his payment on the day he gave his service. She further stated that she cannot say the first day and the last day of working of Sanjay Kumar at the Nawagrahi branch. She also admits that Sanjay Kumar used to arrive bank prior to her arrival at the branch. She also admits she remained as branch manager for two years. In para-8 of the cross-examination this witness denied that on getting notice from the ALC (C) Sanjay Kumar was terminated. In para-10 of the cross-examination she stated that she did not send any letter to the Regional Office regarding details of casual worker. She further admits in para-12 is that no notice, compensation was given to the Sanjay Kumar. She further admits in para-13 is that there was no permanent sweeper or peon posted in the branch from 0807.2013 to 13.07.2015 futher she denied that this is not fact no other peon was engaged in the branch except Sanjay Kumar.

9. It is argued by the representative of the workman that workman was engaged in the UCO Bank at Nawagarhi Branch from opening of the branch dt 9.7.2013 and he was continued in his working their till 13.07.2015. It is also argued that Industrial Dispute was raised on behalf of the workman at before the ALC (C) Pakur on 01.07.2015 for regularisation his service as he was discharging his duties as permanent part time sweeper cum peon. It is also argued that the workman has thoroughly supported his claim by his oral evidence and he admitted that he used to get wages through vouchers on daily basis and the workman has furnished two documents a copy of the letter dt- 02.08.2014 of Nawagarhi branch send to the Zonal Office regarding the details of the sweeper (Ext.-W) and the details of the Sanjay Kumar is given by the then Branch Manager Smt. Sujata Kumari as Ext.-W/1. The contention of the workman is also admitted by M.W-1 Sujata Kumar who was the first manager of the said branch and she worked from 08.07.2013 to 18.11.2013, she admitted her evidence Sanjay Kumar was paid wages Rs. 100/- per day on weekly basis and M.W-2 Poonam Kumari who was also the incharge of branch manager for two years. Who categorically admitted in her evidence there was no permanent peon of the bank from 08.07.2013 to 13.07.2015 and permanent staff was posted since July-2015. So the management witness also supported the contention of the workman. It is further argued that workman has discharged his duties of cleaning work of Nawagarhi branch uninterruptedly from 08.07.2013 to 13.07.2015. So the termination of the workman is covered u/s- 2(OO) of the I.D.Act and by terminating the service of workman management bank violated the provision of section 25F of the I.D.Act and management also resorted to Unfair Labour Practices u/s-25(T) of the I.D.Act. So the claim of the workman to reinstate him as house keeper cum peon. Previously known as PTS with all consequential benefits his justified.

10. On the other hand it is argued from the representative of the management is that Sanjay Kumar was definitely engaged in the Nawagarhi Branch but his service was taken by then Branch Manager as and when required basis and Sanjay Kumar discharged his duties for 1-2 hours for which he has been paid by the bank. Sanjay Kumar never worked on regular basis. Management is not violated of any provision of law nor resorted to unfair labour practices. The Learned counsel for the management relied on the judgement of the Hon'ble S.C passed in State of Karnataka Vs Uma Devi, in which Hon'ble Apex Court has observed that " Appointment, temporary or casual, be regularized or made permanent, court are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. When a person accepts an engagement either temporary or casual in nature, he is aware of the nature of his employment and accepts the employment with his eyes open but on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible…" The learned counsel of the management also relied on another ruling of the Hon'ble S.C passed in Piyara Singh's case were it was held if there is need for regularization in service depending upon the facts and circumstances of the case, a scheme must first be framed and all person eligible for consideration under the scheme must be considered for regularization. Further it was made clear that if regularization means absorption his service, there must be a vacant sanctioned post against which only such employee may be regularized. Obviously, if there is no sanctioned post, there can be no regularization. Accordingly action of the management in not regularizing the workman is legal and justified.

11. Considering all the facts and circumstances of the case and material available on the record as discussed above and the submissions as advanced on behalf of the both the sides, this tribunal finds that UCO Bank, Nawagarhi Branch was open on 08.07.2013, at that time Sujata Kumari (M.W-1) was posted as branch manager. She also admits that Sanjay Kumar was also engaged as a daily worker for cleaning purpose of the branch. This tribunal further find that workman Sanjay Kumar claimed that he worked at Nawagarhi branch of UCO Bank as daily wager working as PTS from 08;07.2013 to 13.07.2015 i.e also not denied by the management bank but the dispute is between the two sides workman claimed he worked regularly in the Nawagarhi Branch from 08.07.2013 to 13.07.2015 and on the other hand management side claimed that his service was taken as and when required.

Moreover, the evidence as laid down from the management side by two witness, it is crystal clear that there was no permanent part time sweeper or peon posted in Nawagarhi branch of UCO Bank till July 2015 that clearly shows that the branch manager of the Nawagarhi branch took the service of Sanjay Kumar the workman from 08.07.2013 to 13.07.2015 that clearly establish the workman Sanjay Kumar has discharged the duties of cleaning work at Nawagarhi Branch at UCO Bank continuously from 08.07.2013 to 13.07.2015 because no documents and no cogent oral evidence has been produce by the management bank before this tribunal that could discard the claim of the working of workman Sanjay Kumar continuously from 08.07.2013 to 13.07.2015. Accordingly the point of determination no.-1 is decided in favour of the workman.

12. So far as the point for determination –(ii) is concerned, this tribunal has to decide whether the management bank has violated the section-2(OO) and section- 25(F) of the Industrial Dispute Act, 1947 and section-25(T) of the Industrial Dispute Act, 1947 as well as provision 25(G) and 25(H) of the I.D.Act as per the claim of the workman side. This tribunal finds that workman Sanjay Kumar was engaged by the management bank from opening of its branch at Nawagrahi from 08.07.2013 to 14.07.2015 i.e duly established by the oral and documentary evidence by the workman and this is also supported by the witnesses of the management bank. This tribunal finds that any bank branch needs the services of class-IV staff for cleaning the premises and other workers for maintaining the branch neat and clean under this pretext branch manager of Nawagarhi Branch took the services of Sanjay Kumar for morethan two years, it does establish that the management bank was in need of part time sweeper (PTS) staff. But in the instant case the management bank stopped the workman Sanjay Kumar working in the said branch from 18.07.2015 i.e a kind of retrenchment without given proper notice and valid reason i.e covered u/s- 2(OO) of theI.D.Act. **Section-25(F) clearly deal the conditions precedent to retrenchment of workman as – " No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—**

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Here in the instant dispute, this tribunal finds that the management bank took the services of Sanjay Kumar continuously for more than two years as Sanjay Kumar (workman) was discharging the duties of part time sweeper i.e well established by the cogent evidence as placed by the workman. Thereafter, management bank retrenched the workman Sanjay Kumar without given any notice or notice pay this is the clear violation of the section 25(F) of theI.D.Act. This tribunal further finds that there was no permanent part time sweeper staff employed in the said branch for more than two years when the service of Sanjay Kumar was taken by the management bank i.e duly admitted by the management witness Sujata Kumari (M.W-1) and Poonam Kumari (M.W-2) the then managers. This tribunal finds that when the permanent part time sweeper staff was employed by the management bank from July-2015 the workman Sanjay Kumar has been retrenched by the management bank without assign any reason that comes under the purview of unfair labour practice as **section-25(T) says " No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.** Here in the instant case management bank took the services of the workman Sanjay Kumar for more than two years and then all of sudden management bank employed some other person in the said branch, this is clear cut violation of the I.d.Act. As bank has already taken the duties of workman Sanjay Kumar worked more than 240 days continuously. This tribunal further finds that the workman side duly corroborated and established the claim of continuous service from 08.07.2015 to 14.07.2015 UCO Bank of Nawagrahi Branch i.e also not controvered by the management bank.

13. Thus on the ultimate analysis and all the facts and the materials available on the record as discussed above, this tribunal finds and hold that the workman Sanjay Kumar has worked as temporary sweeper on daily wages for more than two years in the Nawagarhi Branch of the UCO Bank at that time there was no sweeper employed in the said branch i.e that clearly shows that management bank was in need of regular sweeper in the said branch that's why management bank took the services of workman Sanjay Kumar uninterruptedly for more than two years. Accordingly workman Sanjay Kumar is entitled to reinstate and regularised as full time sweeper now it is called House Keeper Cum Peon. Accordingly it is considered opinion of this tribunal that the claim of the workman Sri Sanjay Kumar to be reinstated and regularised as full time sweeper is justified. So management bank is directed to reinstate and regularised the service of the workman Sri Sanjay Kumar as permanent part time sweeper now it is (HKP) from 14.07.2015 with all consequential benefits within the period of three months from the publication of this award. This award is effected after date of publication in gazette.

This is my award accordingly.

Dictated & Corrected by me.

MANOJ SHANKAR, Presiding Officer

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054